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NO. 93-917

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1993

ALIMADAD JATOI,
Petitioner,

v.

WILLIAM C. MEIER,
Respondent.

Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the dismissal of an appeal from a bankruptcy court order by the district court five (5) days after Appellant's Brief was due without any prior notice, and when no notice of docketing of the appeal had been sent pursuant Rule 8007 of the Bankruptcy Rules, constitutes such an abuse of discretion as to be a fundamental denial of due process under the 14th Amendment of the United States Constitution.

2. Whether the entry of a money judgment subsequent to the dismissal of the bankruptcy, against a debtor in a bankruptcy proceeding and when no formal adversary proceeding or proceeding tantamount to an adversary proceeding had been filed against the debtor seeking a money judgment, constitutes the taking of a judgment without notice in violation of the 14th Amendment to the United States Constitution.

LIST OF PARTIES

The Petitioner, Alimadad Jatoi, was the Debtor and Appellant below. The Respondent, William C. Meier, was the Creditor and Appellee below.

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1993

ALIMADAD JATOI,
Petitioner,

v.

WILLIAM C. MEIER,
Respondent.

Petitioner Alimadad Jatoi respectfully prays that a writ of certiorari issue to review the judgment and opinion entered in this case by the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals which is unpublished is reprinted in the Appendix to this Petition.

The decision of the United States District Court for the Northern District of Texas (Judge John McBryde) has not been

reported. It is also reprinted in the Appendix to this Petition

JURISDICTION

The decision of the Court of Appeals was issued and filed on April 16, 1993. A Petition for Rehearing was filed and the Petition for Rehearing was denied on May 12, 1993 and entered on May 12, 1993.

Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

The Facts

Alimadad Jatoi ("Jatoi"), the Petitioner, was a debtor in the bankruptcy proceeding pending in the United States Bankruptcy Court for the Northern District of Texas. On August 30, 1989, Jatoi filed a Plan of Reorganization and Disclosure Statement in his Chapter 11 bankruptcy proceeding (Docket Entries No 221 and 222). William C. Meier ("Meier"), the Respondent herein, filed an Objection to the Confirmation of Jatoi's Plan of Reorganization (Docket No. 237; Rec. Vol. 1, p. 89). The basis of such objection as it

relates to this petition was that Jatoi had failed to include in his Plan of Reorganization $41,261 in attorneys' fees alleged to be owing him for work done for Jatoi prior to the filing of the bankruptcy petition as a class 20 unsecured claim.

A hearing was held on Meiers' objection on December 19, 1989, and the Bankruptcy Court sustained Meiers' objection (Rec. Vol. 4).

On January 3, 1990, an Agreed Order of Dismissal dismissing Jatoi's Chapter 11 bankruptcy proceeding was entered (Docket Entry No. 250; Rec. Vol. 2, p. 177, 181).

On December 16, 1991, the Bankruptcy Judge entered a Money Judgment against Jatoi for $41,261 in attorneys' fees alleged to have been incurred by Jatoi in favor of Meier prior to the filing of the bankruptcy petition (Rec. Vol. 1, p. 26).

At the time this Money Judgment was entered, there was neither (i) an adversary proceeding under Bankruptcy Rule 7001 filed or pending against Jatoi wherein Meier sought

affirmative relief against Jatoi in the form of a money judgment, or (ii) any proceeding which could be construed as an adversary proceeding under Bankruptcy Rule 3007 pursuant to which Meier was seeking the recovery of a money judgment against Jatoi.

On December 26, 1991, Jatoi filed his Notice of Appeal of the money judgment entered on December 16, 1991 against him (Rec. Vol. 1, p. 27). The appeal was docketed in the United States District Clerk's Office according to the Docket Sheet on July 7, 1992 (Front Page of Vol. 1 of Rec.). Pursuant to Bankruptcy Rule 8009(a)(1) the Appellant's brief would have been due on July 22, 1992. However, no notice of docketing the appeal as required by Bankruptcy Rule 8007(b) was ever prepared or sent to any counsel in the case, or to Jatoi by the Clerk. On July 27, 1992, without any prior notice or warning, the District Court dismissed Jatoi's appeal for failure to file appellant's brief within 15 days of docketing

the appeal (Tr. Vol. 1, p. 3) (Rec. Vol. 1, p. 4).

The District Court's Opinion and Judgment

The Appeal of the December 16, 1991 money judgment against Jatoi was docketed on July 7, 1992. On July 27, 1992, he District Court issued its Memorandum Opinion and Order (Tr. Vol. 1, p. 3) and Final Judgment of Dismissal (Rec. Vol. 1, p. 4) dismissing the appeal for failure to file appellant's brief within 15 days of the docketing of the appeal. In dismissing the appeal relied on the case of International Brotherhood of Teamsters v. Braniff Airways, Inc. (In Re: Braniff Airways, Inc., 774 F.2d 1303, 1305, 5th Cir. 1985).

The Opinion and Judgment of the Court of Appeals

The dismissal of Jatoi's appeal to the United States District Court from the Judgment of December 16, 1991 (Tr. Vol. 1, p. 3)(Rec. Vol. 4) was appealed to the United States Court of Appeals for the 5th Circuit. On April 16, 1993, the United States Court of

Appeals affirmed the dismissal of such appeal by the District Court relying on the case of International Brotherhood of Teamsters v. Braniff Airways, Inc. (In re: Braniff Airways, Inc., 774 F.2d 1303, 1305, 5th Cir. 1985).

Basis for Jurisdiction Below

The District Court had original jurisdiction over the matter pursuant to Rule 8001(a) of the Bankruptcy Rules inasmuch as the appeal to the District Court was from a Final Judgment of a Bankruptcy Judge. The Court of Appeals exercised its appellate jurisdiction as of right pursuant to 28 U.S.C. §1291 because the appeal was an appeal from a Final Order of a District Court of the United States.

REASONS FOR GRANTING THE WRIT

I. **THE UNITED STATES DISTRICT COURT AND THE COURT OF APPEALS IN AFFIRMING THE GRANTING OF A MONEY JUDGMENT SUBSEQUENT TO THE DISMISSAL OF THE BANKRUPTCY AGAINST A DEBTOR IN A BANKRUPTCY PROCEEDING WHEN NO FORMAL ADVERSARY PROCEEDING, OR PROCEEDING TANTAMOUNT TO AN ADVERSARY PROCEEDING, HAD BEEN FILED AGAINST THE DEBTOR SEEKING A MONEY JUDGMENT, CONSTITUTES THE TAKING OF A JUDGMENT WITHOUT NOTICE IN VIOLATION OF**

THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND IS SUCH A DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDING AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER AND SUPERVISION.

The issue complained about by Jatoi on appeal to the United States District Court and to the 5th Circuit Court of Appeals was that the Bankruptcy Judge had entered a Money Judgment against him in the amount of $41,261 for attorneys' fees allegedly incurred to his attorney prior to the filing of his bankruptcy. This Money Judgment was granted by the Bankruptcy Judge and entered subsequent to the dismissal of his bankruptcy. Prior to the dismissal of his bankruptcy and at the time that the judgment was entered, there had never been any formal adversary proceeding pursuant to Rule 7001 of the Bankruptcy Rules, or proceeding tantamount to an adversary proceeding pursuant to Rule 3007 of the Bankruptcy Rules filed or pending seeking a money judgment against him. Jatoi had no notice that Meier was seeking a money judgment

against him for his pre-petition attorneys' fees.

It is fundamental that due process requires notice in any proceeding with an opportunity to appear and be heard before a final judgment may be entered. A judgment entered without adequate notice to the parties is void and subject to collateral attack. Handley v. Four Corners Properties, Inc., 480 F.2d 536 (U.S.C.A. 10th Cir. 1973); Application of Kaufman, 136 F. Supp. 626 (U.S.D.C., New Jersey 1955); Fuentes v. Shevin, 407 U.S. 67, 92 S. Ct. 1983; 32 L. Ed. 2d 556 (1972); Armstrong v. Manzo, 380 U.S. 545, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1964); Mullane v. Central Hantover Trust Co., 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950).

Prior to January 3, 1990, Jatoi was a debtor in a Chapter 11 bankruptcy proceeding. In that proceeding Jatoi filed a Plan of Reorganization (Docket Entry No. 221). Meier filed an Objection to the Confirmation of Jatoi's Plan of Reorganization (Docket Entry

No. 237; Rec. Vol. 1, p. 89). One of the grounds upon which Meier objected to Jatoi's Plan of Reorganization was that he had failed to include $41,261 in attorneys' fees allegedly incurred to him by Jatoi prior to the filing of Jatoi's bankruptcy as an unsecured claim in his Plan of Reorganization. This was the only material pleading ever filed by Meier raising the issue of his pre-petition attorneys' fees in the amount of $41,261.

On December 19, 1989, a hearing was held on Meier's Objection to Jatoi's Plan of Reorganization. The Bankruptcy Judge sustained Meier's Objection (see Vol. 4 of Record on Appeal).

On January 3, 1990, Jatoi's bankruptcy proceeding was dismissed (Docket Entry No. 250; Rec. Vol 2, p. 177, 181). On January 10, 1990, the Bankruptcy Judge entered what purported to be a Money Judgment against Jatoi for $41,261. (Docket Entry No. 252; Rec. Supp. Vol. 1, p. 192).

On December 16, 1991, (after a remand from the 5th Circuit Court of Appeals on an earlier appeal (P. A-9 of Appendix)) the Bankruptcy Judge entered an Amended Money Judgment against Jatoi in the amount of $41,261 (Rec. Vol. 1, p.16).

Although Meier had filed a claim in Jatoi's bankruptcy it is unclear whether or not that claim encompassed his pre-petition attorneys' fees. Jatoi had filed an Objection to Meier's claim (Docket Entry No. 239) but in such objection no demand for relief was made of a kind specified in Rule 7001 so as to constitute such objection an adversary proceeding (see Rule 3007 Bankruptcy Rules; Colliers Vol. 9, Par. 7001.03 at p. 7001-6). At the time the Bankruptcy Judge entered a Money Judgment against Jatoi there were simply no pleadings on file in the bankruptcy proceeding which in any way would have put Jatoi on notice that Meier was seeking a money judgment against him.

Rule 7001 of the Bankruptcy Rules defines an adversary proceeding as a proceeding (i) to recover money or property . . . (ii) to determine the validity, priority, or extent of a lien or other interest in property . . . (iii) to obtain approval pursuant to Sec. 363(h) for the sale of both the interest of the estate and a co-owner in property, (iv) to object to or revoke a discharge, (v) to revoke an Order of Confirmation of a Chapter 11, Chapter 12, or Chapter 13 Plan, (vi) to determine the dischargeability of a debt, (vii) to obtain an injunction or other equitable relief, (viii) to subordinate any allowed claim or interest . . . , (ix) to obtain a declaratory judgment related to any of the foregoing, (x) to determine a claim or cause of action removed pursuant to 28 USC Sec. 1452.

It is clear that the claim which forms the basis for the judgment of $41,261 in favor of Meier against Jatoi, is a claim for attorneys' fees incurred for pre-petition

work. (See par. 4 of Objection to Disclosure Statement at Rec. Vol. 2, p. 76; par. 7 of Response of William C. Meier to Objection to Claim of William C. Meier (Rec. Vol. 2, p. 170 and 171); and par. 4 of Objection to Jatoi's Plan of Reorganization (Rec. Vol. 2, pp. 90, 91).

To the extent that Meier's claim against Jatoi for attorneys' fees incurred prior to the filing of the petition constitutes a claim to recover money or property, then such claim for recovery must be brought in the form of an adversary proceeding. (See Bankruptcy Rule 7001(i); In Re: Penney, 76 BR 160 (USBC, Ca. 1947); and In Re Zodiac Enterprises, Inc., 84 BR 874 (USBC So. Dist. Florida, 1988).

In In Re: Penney, supra, a fact situation similar to the fact situation here existed. There Plaintiff, Sears Roebuck, sold the debtors certain merchandise retaining a purchase money security interest. The debtors later defaulted in their payments and when Sears demanded the collateral back, the

debtors told Sears they no longer had the items. The debtors then filed a Chapter 7 Petition, and Sears filed an action for recovery of the property, and, in the alternative, for a money judgment ("an Adversary Proceeding") in the Bankruptcy Case. Sears did not first seek to lift the automatic stay. Sears also sought contractual attorneys' fees. There the court said:

"This action is exactly the same action Sears would file in State Court had there been no bankruptcy. For some reason, Sears believes that a debtor can still be sued on a state law cause of action after bankruptcy so long as the suit is filed in the bankruptcy court. This is shear nonsense."

"Rule 7001 is not, as Sears mistakenly believes, an open invitation to commence any sort of adversary proceeding against the debtor. Rather, it merely specifies what sort of relief properly sought under the Bankruptcy Code must (emphasis supplied) be obtained by formal adversary proceeding as opposed to less formal motion or contested matter pursuant to Rule 9014. Rule 7001 is not an invitation to sue a debtor on a cause of action which, if brought in state court, would be a blatant violation of the automatic stay. To say that if money or property is sought it must be by adversary proceeding, is not the same as granting leave to seek money or property for any reason, as Sears interprets the rule."

Meier's claim is clearly an action to recover money from Jatoi and must have been brought as an adversary proceeding with all of the procedural requirements and protections afforded a defendant in any federal court lawsuit. One only has to look at the scope of the rules following Rule 7001 to clearly see the procedural and due process protections which are provided a debtor in such a proceeding.

In fact, nowhere in any of the pleadings which were filed either by Jatoi or Meier in the bankruptcy is any relief sought in the form of a money judgment against Jatoi in favor of Meier as a creditor. With respect to Meier, all of his motions were in the form of an objection to Jatoi's Disclosure Statement and Plan of Reorganization.

An objection to a claim joined with a demand for relief of a kind specified in Rule 7001 may constitute an adversary proceeding. (See Rule 3007 Bankruptcy Rules; Collier's Vol. 9, par. 7001.03 at page 7001-6).

However, although Jatoi objected to Meier's claim, Jatoi neither filed a counterclaim or sought any relief in his objection of the kind specified in Bankruptcy Rule 7001. Accordingly, Jatoi's Objection to Meier's claim could not have possibly constituted an adversary proceeding.

All of the action taken by the Bankruptcy Judge in granting a money judgment against Jatoi occurred after the dismissal of the bankruptcy case on January 3, 1990 (Rec. Vol. 2, pp. 177 and 181). First, the bankruptcy judge's entry of the order with respect to attorneys' fees in favor of Meier on January 10, 1990 (Rec. Supp. Vol. 1, p. 192) and the Order of December 16, 1991, purporting to grant Meier a money judgment against Jatoi in the amount of $41,261 occurred after the bankruptcy case was dismissed, and in the case of the latter order, approximately twenty three and 1/2 months after the bankruptcy case was dismissed. It is Jatoi's contention that

the bankruptcy judge lacked jurisdiction to enter the orders.

In the case of Matter of Solar Equipment Corp., I.D., 19 BR 1010 (USDC W.D. La. 1982) the District Court held following dismissal of a bankruptcy case, the bankruptcy court lacked subject matter jurisdiction to determine the federal tax liability of a debtor. The court went on to state:

"Once a case is dismissed, there is no longer a bankruptcy estate. Concomitantly, there is no authority (or reason) for a bankruptcy court to continue the determination of a debtor's tax liability. In Gardens of Cortez v. John Hancock Mutual Life Insurance Co., 585 F.2d 975 (10th Cir. 1978) the court considered whether the bankruptcy court had jurisdiction to consider the debtor's counterclaim after the dismissal of the debtor's petition. As the Tenth Circuit held . . . having dismissed the petition, the bankruptcy court lost jurisdiction to proceed further with Cortez' counterclaim. In the case at bar, as in Gardens of Cortez, the bankruptcy court having dismissed the debtor's petition, has no jurisdiction to proceed to determine debtor's tax liability."

Section 349 of the United States Bankruptcy Code (11 USC Sec. 349) specifically provides for the effect of a dismissal. Subsection (b) thereof provides that unless

the bankruptcy court for cause orders otherwise, a dismissal of a case revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

In Gardens of Cortez, supra, the creditor filed a Motion to Lift the Stay in order to seek to proceed with a foreclosure action against the debtor. The debtor answered the creditor's stay complaint and counterclaimed against the creditor for alleged tortious interference. Prior to a hearing on the creditors request to lift the stay and the debtor's counterclaim the bankruptcy case was dismissed. The Court there held:

"Having determined that the Bankruptcy Court did not err in dismissing the petition, the other matters raised in this court by Cortez are in our view rendered moot. Certainly Hancock's request that the stay order be lifted became moot when the bankruptcy judge dismissed the petition. And by the same token, having dismissed the petition, the Bankruptcy Court lost jurisdiction to proceed further with Cortez' counterclaim." (Emphasis supplied)

In construing Sec. 349 of the United States Bankruptcy Code (11 USC Sec. 349) the

United States Court of Appeals for the Ninth Circuit, in the matter of In Re: Income Property Builders, Inc., 699 F.2d 963 (9th Cir. 1982) stated as follows:

"11 USC Sec. 349, treating the effects of a bankruptcy, obviously contemplates that on dismissal a bankrupt is reinvested with the estate, subject to all encumbrances which existed prior to the bankruptcy. After an order of dismissal, the debtor's debts and property are subject to the general laws unaffected by bankruptcy concepts. . ."

The only instances of which Jatoi is aware in which a bankruptcy court continues to have some jurisdiction after a dismissal, are those cases under Sec. 349(b) of the Bankruptcy Code (11 USC Sec. 349(b)) where a court specifically retains jurisdiction over certain funds for cause under Sec. 349(b)(3). See In Re: Gonic Realty Trust, 909 F.2d 624 (1st Cir., 1990); and In Re: Miranne, 87 BR 897 (E. D. La., 1988).

The only other instance in which a bankruptcy court can retain some jurisdiction following dismissal of a case is the inherent power of a bankruptcy court to construe its

own orders. See In Re: Herman J. Franklin, 802 F.2d 324 (9th Cir., 1986).

In this case the Bankruptcy Court's Orders of January 10, 1990, and December 16, 1991, neither involved retention of jurisdiction over funds or property of the estate pursuant to 11 USC Sec. 349(b)(3) or construction of the Bankruptcy Court's previous orders. Accordingly, it is Jatoi's contention that the Bankruptcy Court lacked jurisdiction to have entered said orders and, accordingly, such orders are void.

II. THE COURT OF APPEALS AFFIRMING OF THE DISMISSAL OF AN APPEAL FROM A BANKRUPTCY COURT ORDER BY THE DISTRICT COURT FIVE DAYS AFTER APPELLANT'S BRIEF WAS DUE WITHOUT ANY PRIOR NOTICE AND WHEN NO NOTICE OF DOCKETING OF THE APPEAL HAD BEEN SENT PURSUANT TO RULE 8007 OF THE BANKRUPTCY RULES IS IN CONFLICT WITH OTHER DECISIONS OF THE 5TH CIRCUIT COURT OF APPEALS AND OTHER FEDERAL COURT OF APPEALS ON THE SAME MATTER AND CONSTITUTES SUCH AN ABUSE OF DISCRETION AS TO BE A FUNDAMENTAL DENIAL OF DUE PROCESS UNDER THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The standard of review of an Order dismissing an appeal for failure to file

Appellant's Brief is whether the lower court abused its discretion in dismissing the appeal. Pyramid Mobile Homes, Inc. v. Speake, 531 F.2d 743 (5th Cir. 1976); Ispass v. Pyramid Motor Freight Corp., 333 U.S. 695, 68 S. Ct. 954, 91 L. Ed. 1184.

Jatoi's failure to timely file a brief in the District Court was not the result of contumacious conduct by Jatoi, or conscious indifference to the Rules of Procedure of the United States District Court or Rules of Appellate Procedure. If Jatoi or his counsel had received notice of the date the appeal was docketed, his brief would have been timely filed. His failure to receive notice of the docketing of the appeal was through no fault of his own. Jatoi contends that dismissal of his appeal under the facts present in this record was an abuse of discretion, and the appeal should be reinstated..

In the case of Pyramid Mobile Homes, Inc. v. Speake, supra, the Court held that pursuant to Federal Rules of Appellant Procedure, Rule

3(a), dismissal is discretionary and should be considered in light of the prejudicial effect of delay on the Appellee and the bona fides of the Appellant.

Rule 3 clearly contemplates that late filing of an appellant's brief can be allowed inasmuch as it provides:

"Failure of an Appellant to take any step other than the timely filing of a Notice of Appeal does not affect the validity of the appeal, but is ground only for such action as the Court of Appeals deems appropriate, which may include dismissal of the appeal."

Thus, it can clearly be seen that failure to timely file a brief does not require dismissal of the appeal. Whether a dilatory appellant should be allowed to proceed with his appeal is within the discretion of the appellate court. Ispass v. Pyramid Motor Freight Corp., supra. Whether or not an Appellate Court has abused its discretion in dismissing an appeal for failure to timely file an appellant's brief should be determined upon the facts of each case, giving due consideration to the prejudicial effect of

delay on the appellee and the bona fides of the appellant. Dawson v. Williams, 146 F.2d 38 (5th Cir. 1944).

Jatoi recognizes, in light of Pyramid Mobile Homes v. Speaks, supra, that especially in bankruptcy cases, prompt resolution of the appeal process should be sought; however, no prejudicial effect directly impacts on the bankruptcy aspects of this case, or upon the creditors of Jatoi, as the Debtor. Jatoi's bankruptcy case was dismissed on January 3, 1990, (Rec. Vol.2 , pp. 177 and 181).

The judgment from which this appeal was taken was entered December 16, 1991, approximately one year eleven months after the dismissal of the bankruptcy. There can be no prejudicial effect upon Meier in reinstating the appeal. The judgment has been fully secured by a bond for stay of execution of judgment pending appeal, which is secured by certificates of deposit in the principal sums of $22,629.36 and $34,000.00, respectively (Rec. Supp. Vol. 1, p. 196).

Further, the bona fides of Jatoi, as reflected by the issues raised in this petition dictates that this appeal be reinstated.

There is no evidence of any dilatory tactics undertaken by Jatoi in the case before the Bankruptcy Court or District Court or upon appeal, or of contumacious conduct or conscious disregard of the Federal Rules of Civil Procedure or Federal Rules of Appellate Procedure. In fact, the record demonstrates that good cause exists for the failure of Jatoi to have filed his Appellant's Brief within fifteen (15) days of docketing the appeal inasmuch as the record reflects that no Notice of Docketing that Appeal was sent by the District Clerk in compliance with Rule 8007 of the Bankruptcy Rules. Further, the case was dismissed by five (5) days after Jatoi's brief was due without any correspondence or notification to Jatoi.

The Bankruptcy Rules are designed to assure due process and an orderly procedure in

the handling of bankruptcy matters, as well as certainty in the timing and filing of bankruptcy related papers. The time for filing appellant's brief in the appeal of a bankruptcy order to the district court runs from the "docketing" of the appeal (Bankruptcy Rule 8009(a)(1)). Bankruptcy Rule 8007(b) requires the clerk of the District Court to give notice to all parties of the date on which the appeal was docketed.

The facts of this case are easily distinguished from the facts of International Brotherhood of Teamsters v. Braniff Airways, Inc., (In re Braniff Airways, Inc.) 774 F.2d 1303 (5th Cir. 1985) cited by the District Court as support for its Memorandum and Order dismissing Jatoi's appeal (P. A-7 of Appendix), and by the Court of Appeals in affirming such dismissal (P. A-1 of Appendix). In that case the appellant's brief had not been filed 19 1/2 months after it was due. Further, the appeal was dismissed "because no explanation had been given for appellant's

failure either to file a brief or to monitor the case." Id. p. 1304. However, this court noted in that case that, although there was no issue concerning the good faith of appellant or its counsel, "the delay in considering the appeal might well be prejudicial to the appellee and others." Id. 1304. In the case now before this Court, the District Court dismissed the appeal when the Appellant's Brief was not filed only 5 days after it was initially due. (Note: This does not involve a situation where an extension had been sought and granted, and then the brief wasn't timely filed.) The Appellant has good cause for not filing the brief because notice of docketing the appeal was not sent to him or his counsel. Lastly, neither Appellee nor others is prejudiced. The Appellant's bankruptcy had been dismissed before the judgment at issue, thus no other interested parties exist. The judgment is secured by the above referenced bond.

The opinion of the Court of Appeals in this case (p. A-1 of Appendix) clearly ignores guidelines which the Court of Appeals had set for reviewing dismissals of appeals for failing to timely file an Apellant's Brief In Pyramid Mobil Homes, Inc. v. Speak, supra, the Court of Appeals set forth the following guideline:

> Pursuant to Federal Rules of Appellate Procedure, Rule 3(a), dismissal is discretionary and should be considered in light of the prejudicial effect of delay on the appellee and the bona fides of the appellant.

This standard was clearly considered in International Board of Teamsters v. Braniff Airways, supra, wherein the Court said:

> Although there was no issue concerning the good faith of appellate or its counsel, "the delay in considering the appeal might well be prejudicial to the appellees and others" Id. 1304.

Clearly, in the International Brotherhood of Teamsters case, the prejudicial nature of the delay, in accordance with the guidelines set forth by Pyramid Mobil Homes, Inc. v. Speak, supra, was instrumental in the decision.

Such decision is also in comflict with the decisions of other circuits. See Gunther v. E. I. DuPont De Nemours & Company, 255 F.2d 710 (U.S.C.S. 4th Cir., 1958); Stumpf v. Matthews, 195 F.2d 25 (U.S. App. D.C. 1951); Miller v. U. S., 117 F.2d 256 (U.S.Ct. 7th Cir. 1941).

Further, the Court of Appeals has clearly misconstrued the import of Federal Rule of Bankruptcy Procedure 8007(b) and 8009(a)(1). Federal Rule of Bankruptcy Procedure 8009(a)(1) clearly provides that the appellant's brief is due 15 days after the entry of the appeal on the docket. Federal Rule of Bankruptcy Procedure 8007(b) provides the mechanisms by whch litigants are apprised of the date upon which the appeal is entered on the docket. The language of Rule 8007(b) is mandatory and provides:

> The clerk of the district court or the clerk of the bankruptcy appellate panel shall (emphasis supplied) enter the appeal in the docket and give notice promptly to all parties to the judgment, order or decree appealed from of the date on which the appeal was docketed.

Jatoi has never contended that the date upon which the Appellant's brief is due runs from the date of the notice provided by the District Clerk. Jatoi's contention has always been and is simply that he was never given notice of the date upon which the appeal was entered on the docket, and therefore he had no means to know the date from which the 15 days begins to run in which he must file his Appellant's Brief, such date being the date of entry of the appeal on the docket, in this case, July 7, 1992.

Although it is true that the District Judge in a response to an agreed motion between Jatoi and Meier to reinstate the appeal entered an order to the effect that he was inclined to grant such agreed motion, but inasmuch as the case had been appealed to the Court of Appeals he had no jurisdiction to do so until such time as action was taken to remand the matter to his court. Jatoi knows of no method by which the case could have been remanded to the District Court except through

his appeal to the Court of Appeals. In fact, one of the remedies which Jatoi sought specificaly before the Court of Appeals as is reflected in the conclusion of his Appellant's Brief to the Court of Appeals was in fact that the case be remanded to the District Court for a decision on the merits. There is simply no evidence before the Court that Jatoi failed to monitor his appeal. The undisputed evidence is that the District Clerk never prepared and sent a notice of the date of docketing of the appeal to all parties in interest as required by Bankruptcy Rule 8007(b).

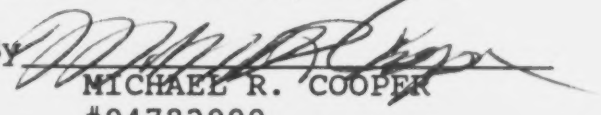
Accordingly, in view of the legitimate issues Appellant can raise in his appeal as are reflected by the other issues raised herein, the District Court clearly abused its discretion by dismissing the appeal.

CONCLUSION

Thus, and for all the foregoing reasons, the Court should grant the Writ of Certiorari and set the case down for briefing and argument on the issues herein presented.

Respectfully submitted,

DOOLEY & RUCKER, P.C.

By 

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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1993

ALIMADAD JATOI,
Petitioner,

v.

WILLIAM C. MEIER,
Respondent.

Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1750
Summary Calendar

IN THE MATTER OF: ALIMADAD JATOI

Debtor.

ALIMADAD JATOI,

Appellant,

VERSUS

WILLIAM C. MEIER,

Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(4:92-CV-488-A)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

---

1 Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

Alimadad Jatoi appeals the district court's summary dismissal of his appeal from a bankruptcy court order. We AFFIRM.

I.

In August 1987, Jatoi filed a voluntary petition under Chapter 11 of the Bankruptcy Code. William C. Meier was apparently representing Jatoi in ongoing litigation, and the bankruptcy court authorized Jatoi to employ Meier under a general retainer as "special litigation counsel." In the fall of 1989, Meier objected to Jatoi's disclosure statement and reorganization plan, asserting that $14,962.07 in attorney's fees and expenses for services rendered to Jatoi post-petition and previously approved by the bankruptcy court should be listed as an administrative expense. He also contended that fees and expenses of $41,261.00[2] were incurred pre-petition and should be listed as a secured claim.[3] Jatoi objected to

2 Meier's October 27, 1989, Objection to Disclosure Statement lists this amount at $41,271.00, but the subsequent Objection to Debtor's Plan of Reorganization as well as the court's order, list it at $41,261.00.

Meier's claims, and moved to have Meier disgorge some $63,000.00 in previously paid fees. No ruling was rendered on any of these claims, and Jatoi's bankruptcy was dismissed pursuant to an agreed order on January 3, 1990.

On January 10, 1990, the bankruptcy court entered findings of fact, conclusions of law, and a *nunc pro tunc* order denying Jatoi's motion to disgorge, effective as of December 19, 1989. On November 12, 1991, the bankruptcy court entered a separate judgment denying the disgorgement motion.[4] On December 16, it ordered, also *nunc pro tunc*, that Meier recover the $41,261.00 in pre-petition fees and that the $14,962.07 in post-petition fees were "due and payable".

---

3 In his Objection to Disclosure Statement, filed on October 27, 1989, Meier suggested that this amount should be listed as a Class 20 unsecured claim. However, on November 30, in his Objection to Debtor's Plan of Reorganization, he amended his position and stated that it should be a Class 20 secured claim because Jatoi had been notified that Meier was assorting an attorney's lien against all of Jatoi's books, records and papers in his possession.

[4] The explanation for this belated separate judgment is tied to another *nunc pro tunc* order which is not in the record before us. When the January 10 order denying the motion to disgorge was entered, apparently a second *nunc pro tunc* order was entered on the matter of Meier's fees. A reference to such an order appears on the bankruptcy court docket sheets, but, as stated, no such order is in the record before us. It seems that Jatoi appealed this second order, and the district court dismissed for lack of jurisdiction because the notice of appeal was not timely filed. A timely notice of appeal to this court was filed; we remanded for entry of a separate judgment pursuant to Fed. R. Bankr. P. 9021. The district court apparently referred the matter to the bankruptcy court and thus, the second set of *nunc pro tunc* orders was entered, one in November 1991 and one in December 1991, discussed *infra*.

Jatoi filed a timely notice of appeal from the December 16 order. It was not docketed, however, until July 7, 1992, from which time the bankruptcy rules allow the appellant 15 days to file a brief. Fed. R. Bankr. P. 8009(a)(1). Receiving no brief from Jatoi by July 27 (five days after it was due), the district court *sua sponte* dismissed the appeal.[5] Jatoi took the instant appeal on August 26, but on September 29, he and Meier filed an agreed motion for reinstatement of

the appeal in the district court. That motion has since been denied.[6]

II.

We review the district court's dismissal for clear abuse of discretion, *Pyramid Mobile Homes, Inc. v. Spoake*, 531 F.2d 743 (5th Cir. 1976), and find none.

---

5 Fed. R. Bankr. P. 8001(a) allows, but does not mandate, such dismissal.

6 Initially, by order on November 16, 1992, the district court held the agreed motion in abeyance, suggesting in its order that, despite its inclination to the contrary, it would grant the motion if only to allow Meier to have the matter decided on its merits. However, the court pointed out that it lacked jurisdiction because an appeal to this court had already been taken, and implied that the appellant should take "some action . . . to cause the action to be remanded to this court or to cause the appeal to be reinstated".

Jatoi did not withdraw his appeal to this court, nor did he file a motion to remand to the district court. On December 9, the district court entered a minute order stating that if no action was taken within 30 days, the motion to reinstate would be denied. Apparently no action was taken, and the agreed motion was denied on January 13, 1993.

Jatoi correctly notes that the 15 day period for filing appellate briefs in bankruptcy actions runs from the date the appeal is docketed, and, contends that, because he never received such notice, he

could not have known when his 15 days began to run. However, under Jatoi's reasoning, we would be required to find to find that a district court abuses its discretion in all cases if it does not make an express finding regarding the appellant's receipt of notice. Although Federal Rule of Bankruptcy Procedure 8007(b) states that the district court clerk "shall enter the appeal in the docket and give notice promptly to all parties . . . of the date on which the appeal was docketed", Rule 8009(a)(1) does not provide that the 15 days for filing appellant's brief runs from the date of notice of the entry. Rather, the period runs from "entry of the appeal on the docket". Fed. R. Bankr. P. 8009(a)(1). And, if an appellant fails to take certain steps in the prosecution of the appeal, Rule 8001(a) grants the district court discretion to take "such action as [it] deems appropriate, which may include dismissal of the appeal". We do not read these rules to require the district court to make an express finding, in every

case, of receipt of notice of docketing before an appeal can be dismissed.

In *International Bhd. of Teamsters v. Braniff Airways*, 774 F.2d 1303 (5th Cir. 1985), we affirmed such a dismissal in the absence of an express finding regarding notice. There, the appellant had not filed his brief 19 1/2 months after filing his notice of appeal. The district court dismissed because "no explanation had been given for appellant's failure either to file a brief or to monitor the case". *Id.* at 1304. Here, Jatoi contends that he received no notice of docket entry, but offers no explanation for his failure to monitor his case. Seven months passed between the filing of his notice of appeal and dismissal. The record does not reflect any effort to contact the court or determine the status of his appeal.

The district court relied on *Braniff* in its dismissal order. In its subsequent order, holding the agreed motion to reinstate in abeyance,[7] see *supra* note 6, it is clear

that the district judge was quite familiar with this case. Given the facts of this case, and the district court's familiarity with them, we cannot say that the dismissal was a clear abuse of discretion. As stated in *Braniff*, "[p]atently the issue is not what this panel might have done if we were the district court, but whether, having set a standard granting district courts discretion, we should deny in action what we have announced as precept." *Id.* at 1305.

III.

Accordingly, the judgment is

AFFIRMED.

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7 We note that this order gave Jatoi the opportunity to gain the precise relief he seeks here. Had he but followed the district court's initial, and subsequent, suggestion, his appeal to the district court might well have been reinstated.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	
ALIMADAD JATOI,	§	
	§	
Debtor	§	
	§	
	§	
ALIMADAD JATOI,	§	
	§	
Appellant,	§	
	§	
VS.	§	NO. 4:92-CV-488-A
	§	
WILLIAM C. MEIER,	§	
	§	
Appellee.	§	

MEMORANDUM OPINION
AND
ORDER

Came on for consideration the above-styled and numbered action. This appeal was docketed in this court on July 7, 1992. Appellant's brief on appeal was due fifteen days thereafter. Bankr. R. 8009. The record on appeal reflects that appellant has failed to file his brief as required. Accordingly, the court finds that the above-styled and numbered action should be dismissed.

International Brotherhood of Teamsters v. Braniff Airways, Inc. (In re Braniff Airways, Inc.), 774 F.2d 1303, 1305 (5th Cir. 1985). Therefore,

The court ORDERS that the above-styled and numbered action be, and is hereby, dismissed.

SIGNED July 27, 1992.

s/John McBryde
JOHN McBRYDE
United States District Judge

FOR THE FIFTH CIRCUIT

No. 91-1524

Summary Calendar

IN THE MATTER OF: ALIMADAD JATOI, Debtor.

ALIMADAD JATOI,

Appellant,

versus

WILLIAM C. MEIER,

Appellee.

Appeal From the United States District Court
for the Northern District of Texas
(CA4-90-266-A)

(September 26, 1991)

Before GARWOOD, HIGGINBOTHAM, and BARKSDALE,

Circuit Judges.

PER CURIAM:[1]

---

[1] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

"EXHIBIT A"

In this case we deal with the scope of Bankruptcy Rule 9021(a) which incorporates F.R. Civ. P. 58 requiring that all judgments in adversary proceedings be set forth on a separate document. Appellant Alimadad Jatoi was the debtor in a bankruptcy proceeding in the Northern District of Texas. Appellee William C. Meier had been Jatoi's attorney and filed a claim for fees in the bankruptcy proceeding.

The bankruptcy court granted the attorneys' fee claim in an order which was signed and entered on the docket on January 10, 1990. On February 6, 1990, Jatoi's attorney filed a notice of appeal from this order, along with an affidavit attempting to justify what he believed to be an untimely filing. The district court denied the appeal for lack of jurisdiction on the basis of the untimely filing. Jatoi timely filed a notice of appeal from that denial.

Jatoi has now moved in this court to dismiss his appeal and remand the case to the district court because the bankruptcy court

has never entered a separate judgment as required by Rule 9021(a). We find that the bankruptcy court's order did not constitute a separate judgment and that Jatoi has not waived his right to a separate judgment. Therefore we grant his motion to remand to the district court.

I.

The first question we must resolve is whether the bankruptcy court's order constituted a separate judgment as required by Bankruptcy Rule 9021(a). Although the order contained language which resembles that used in a judgment ("it is accordingly ordered, adjudged, and decreed"), it also contains findings of fact and other materials supporting the court's decision. Documents which contain such additional reasoning and findings are not separate judgments. In the Matter of Seiscom Delta, 857 F.2d 279, 280 (5th Cir. 1988). Therefore, the bankruptcy court's order did not constitute a separate judgment.

II.

The second issue we must address is whether Jatoi has waived his right to demand a separate judgment by pursuing his appeal to this point. In approaching the waiver issue, we bear in mind the Supreme Court's observation that the separate judgment rule "is not designed as a trap for the inexperienced" and "should be interpreted to prevent loss of the right of appeal, not to facilitate loss." Mallis v. F.D.I.C., 435 U.S. 381, 386 (1978).

We consider three factors in determining whether the separate judgment requirement has been waived: (1) whether the lower court "clearly evidenced its intent that the opinion and order would represent the final decision in the case"; (2) that "a judgment was recorded in the clerk's docket"; and (3) most importantly, that petitioner "did not object to the taking of the appeal in the absence of a separate judgment." In the matter of Seiscom Delta, Inc., 857 F.2d 279, 282 (5th Cir. 1988).

Since the first two factors are clearly present in this case, we focus on the failure of petitioner to object. We are persuaded by similar cases in other circuits which have held that filing an appeal based upon the adverse judgment does not constitute a waiver of the separate document requirement particularly where the right to appeal on the merits would be lost. In re Ozark Restaurant Equipment, Co., 761 F.2d 481, 483 (8th Cir. 1985). See also, Parisie v. Greer, 705 F.2d 882, 891 (7th Cir. 1983) (en banc); Gregson & Associates Architects v. Government of the Virgin Islands, 675 F.2d 589, 593 (3d Cir. 1982). To hold otherwise would undermine the very purpose of the rule which is to protect appellants in Jatoi's position by providing certainty in the timing of appeals. We are therefore unwilling to hold that an appellant waives his right to a separate judgment by not asserting it before appealing the order itself. Because no separate judgment was entered in this case, Jatoi's appeal could not have been time-barred.

Accordingly, we deny the motion of appellant to dismiss this appeal but grant the appellant's alternative motion to remand this case to the District Court for an initial decision on the merits. We also, for the reasons set out above, deny the motion of the appellee to dismiss the appeal for lack of jurisdiction. In addition, we deny the motion to supplement the record on appeal which is no longer necessary.

AMENDMENT XIV TO THE UNITED STATES CONSTITUTION

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statute

§ 349. **Effect of dismissal**

(a) Unless the court for cause, orders, otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(f) of this title.

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title --

(1) reinstates --

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) revests the property of the estate in the entity in which such property was vested immediately before the

commencement of the case under this title.

Rules

3007 - Objections to Claims

An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing hereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding.

7001 - Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. It is a proceeding (1) to recover money or property, except a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 443(b) or § 725 of the Code, Rule 2017, or Rule 6002, (2) to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d),(3) to obtain approval pursuant to 363(h) for the sale of both the interest of the estate and of a co-owner in property, (4) to object to or revoke a discharge, (5) to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan, (6) to determine the dischargeability of a debt, (7) to obtain an injunction or other equitable relief, (8) to subordinate any allowed claim or interest, except when subordination is provided in a chapter 9, 11, 12, or 13 plan, (9) to obtain a declaratory judgment relating to any of the foregoing, or (10) to determine a claim or cause of action removed pursuant to 28 U.S.C. § 1452.

8007 Completion and Transmission of the Record; docketing of the appeal

(b) **Duty of Clerk to Transmit Copy of Record; Docketing of Appeal**

When the record is complete for purposes of appeal, the clerk shall transmit a copy thereof forthwith to the clerk of the district court or the clerk of the bankruptcy appellate panel. On receipt of the transmission the clerk of the district court or the clerk of the bankruptcy appellate panel shall enter the appeal in the docket, and give notice promptly to all parties to the judgment, order, or decree appealed from of the date on which the appeal was docketed. If the bankruptcy appellate panel directs that additional copies of the record be furnished, the clerk of the bankruptcy appellate panel shall notify the appellant and, if the appellant fails to provide the copies the clerk shall prepare the copies at the expense of the appellant.

8009 - Briefs and Appendix; Filing and Service

(a) **Briefs.** Unless the district court or the bankruptcy appellate panel by local rule or by order excuses the filing of briefs or specifies different time limits:

(1) The appellant shall serve and file a brief within 15 days after entry of the appeal on the docket pursuant to Rule 8007.

Supreme Court, U.S.
FILED
SEP 9 1993
OFFICE OF THE CLERK

No. 93-211

In The

Supreme Court of the United States

October Term, 1993

ALIMADAD JATOI,

Petitioner,

vs.

WILLIAM C. MEIER,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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No. 93-211

In The

Supreme Court of the United States

October Term, 1993

ALIMADAD JATOI,

Petitioner,

vs.

WILLIAM C. MEIER,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent William C. Meier files this Brief in Opposition to the Petition for Writ of Certiorari in this matter.

CORRECTIONS OF ERRORS IN THE STATEMENT OF THE CASE

The proceedings pending involving these parties in the United States Bankruptcy Court on December 19, 1989 were:

1. Disclosure Statement and Plan of Reorganization of Debtor, Alimadad Jatoi;

2. Objection to Disclosure Statement [Docket No. 228; R. Vol. 1, p. 74];

3. Objection to Debtor's Plan of Reorganization by William C. Meier [Docket No. 237; R. Vol. 1, p. 89];

4. Objection of Debtor to Claim of William C. Meier [Docket No. 239; R. Vol. 1, p. 103];

5. Motion of Debtor for Fees of William C. Meier to Be Disgorged [Docket No. 240; R. Vol. 1, p. 117];

6. Response of William C. Meier to Motion for Fees to Be Disgorged [Docket No. 245; R. Vol. 1, p. 123];

7. Motion of William C. Meier to Withdraw as Counsel of Record and Require Debtor to Pay Attorney's Fees [Docket No. 246; R. Vol. 1, p. 161];

8. Response of William C. Meier to Objection to Claim [Docket No. 247; R. Vol. 1, p. 167].

All of these proceedings were the subject of a Hearing on Confirmation and Motion for Fees of William C. Meier to Be Disgorged and Objection to Claim of William C. Meier which was held in open court on December 19, 1989. [*See* transcript of hearing, Docket No. 262; R. Vol. 4, p. 1.] At that hearing, Alimadad Jatoi, Debtor, appeared personally and by and through his attorney of record, Mr. Joe B. Abbey, 1717 Main Street, Suite 220, Dallas, Texas.

At the conclusion of the hearing, the Bankruptcy Court announced:

> "All right. The objections by the Debtor to the claim of Mr. Meier are overruled, and that claim is allowed. Mr. Meier's objection to the Plan will be sustained. And the Debtor's motion for Mr. Meier's fees to be disgorged is overruled."

[R. Vol. 4, p. 30, lines 13-19.]

The fees approved were $41,261 in pre-petition attorney's fees, and $14,962.07 in post-petition attorney's fees and expenses. [Motion to Enter Separate Order is attached in Appendix A, *infra* at 1a-10a. Nunc Pro Tunc Order of the Honorable Massie Tillman, United States Bankruptcy Judge dated December 16, 1991 is attached in the Appendix B, *infra* at 11a-12a.]

Contrary to the statement in the Petition for Writ of Certiorari on page 4, William C. Meier received a notice from the office of Nancy Doherty, Clerk of the Court, United States District Court for the Northern District of Texas, dated July 1, 1992 advising of an appeal number being assigned to the Bankruptcy case. That letter showed to have been mailed also to Michael D. Mosher, a prior counsel for Debtor, Alimadad Jatoi. [*See* letter dated July 1, 1992 from United States District Court Clerk Nancy Doherty attached in the Appendix C at 13a.]

No bond for stay of execution of judgment pending appeal secured by Certificates of Deposit is currently applicable to this proceeding as stated on page 22 of the Petition for Writ of Certiorari.

The Bond for Stay of Execution of Judgment Pending Appeal

applied only to an appeal to the United States District Court for the Northern District of Texas, Fort Worth Division. No application for supersedeas bond was filed with the United States Supreme Court. A Writ of Execution was served by the United States Marshal and the security posted for the supersedeas bond in the amount of $56,223.07 collected and delivered by the United States Marshal to William C. Meier.

On September 3, 1993, William C. Meier received a notice mailed on September 1, 1993 in San Antonio, Texas, that Alimadad Jatoi had filed an additional case under Chapter 11 of the Bankruptcy Code on August 25, 1993. [*See* Appendix D at 15a.]

REASONS FOR DENYING THE WRIT

I.

THE ISSUE OF THE AUTOMATIC STAY

On August 4, 1987, Alimadad Jatoi initiated the Chapter 11 Bankruptcy out of which this appeal arises. Alimadad Jatoi is the party advocating appeal. Alimadad Jatoi's current Petition for Writ of Certiorari is a continuation of a judicial proceeding that was initiated by the Debtor, Alimadad Jatoi, and is not "against the Debtor" as required in the applicable section of the Bankruptcy Code, 11 U.S.C. § 362(a)(1). *Freeman v. Commissioner of Internal Revenue*, 799 F.2d 1091 (5th Cir. 1986). Accordingly, the automatic stay in the August 25, 1993 case does not apply to this appellate case.

II.

NO GROUNDS EXIST FOR GRANTING THE WRIT OF CERTIORARI.

The United States Court of Appeals for the Fifth Circuit correctly reviewed Alimadad Jatoi's claims in its Case No. 92-1750, considering properly the standard of review as announced in the case of *Pyramid Mobile Homes, Inc. v. Speake,* 531 F.2d 743 (5th Cir. 1976) as calling for reversal in this case only in the event of a finding of a clear abuse of discretion on the part of the District Court in dismissing Alimadad Jatoi's appeal.

The familiarity of the District Court with this case is underscored and highlighted by an Order of the Court signed November 16, 1992. [*See* Appendix E at 18a.]

The tactics undertaken by Alimadad Jatoi in this case amounted to the filing of a Notice of Appeal and then ignoring responsibilities for prosecuting the appeal through the filing of the record until he was notified by certified mail letter that his abortive appeal had, in fact, been dismissed. [*See* certified mail letter dated August 19, 1992 addressed to Alimadad Jatoi and received by Alimadad Jatoi on August 20, 1992. Appendix F at 21a-28a.]

A proper assessment of Alimadad Jatoi's activities in this case before the Bankruptcy Court, the District Court, the United States Court of Appeals and in this Honorable Court is that he suffers from acute, selective, negative monetary amnesia. Whether considering matters clearly established as fact in records or attempting to recall documented events, Petitioner Alimadad Jatoi simply cannot remember matters that do not absolutely fit his desires and interests. The fees of $41,261 awarded in this case resulted from extensive work in preparation of a case styled *Alimadad Jatoi v. Amega Construction, Inc. and Aetna Insurance*

Company. A reference to that case appears at footnote 4 in the Order of November 16, 1992 signed by Honorable John McBryde, United States District Judge, in this case. In yet another unpublished opinion filed June 30, 1992 involving Alimadad Jatoi styled *In the Matter of Dr. Alimadad Jatoi, et al., Debtors; Aetna Insurance Company, et al., Appellee v. Dr. Alimadad Jatoi, Appellant,* Summary Calendar No. 91-7003 in the Fifth Circuit Court of Appeals, where Jatoi was attempting to overturn a part of an open court settlement of the *Jatoi v. Amega Construction, Inc. and Aetna Insurance Company* case, the Fifth Circuit Court of Appeals observed:

> "Reiteration of the procedural history of this case would serve no useful purpose. It suffices that Jatoi's pettifoggery and abuse of the civil process is facially apparent, or at best thinly disguised, at every turn. We were reluctant to impose sanctions when his prior appeal of the same matter on essentially identical and equally baseless claims was dismissed as frivolous. We shall not, however, repeat our indulgence now. In the face of our dismissal of the first appeal as frivolous, Jatoi has nevertheless repeated the same meritless performance, but even more egregiously and at additional unwarranted cost of time, money and resources to the opposing parties and to the civil justice system as well.
>
> Counsel Cooper attempts to justify his own sanctionable conduct on the basis of his belated entry into the case shortly before Jatoi's appellate brief was due, and on his purportedly limited opportunity to familiarize himself with Jatoi's case. But that excuse rings hollow in

> view of the time that has elapsed since counsel spruced up Jatoi's pro se brief and filed it over his own signature. . . ."

The District Court's familiarity with the case at bar and the activities of litigant Alimadad Jatoi certainly underscore the wisdom of the action of the United States Court of Appeals for the Fifth Circuit in allowing the discretionary ruling of the District Court to stand in this case.

Even then, William C. Meier is listed as a creditor in the recently-filed Chapter 11 proceeding initiated on August 25, 1993. No doubt that will prove an opportunity to present, as Paul Harvey might say, "the rest of the story."

III.

JURISDICTION EXISTED IN THE BANKRUPTCY COURT ON DECEMBER 19, 1989 TO RENDER JUDGMENT.

The Bankruptcy Court retains jurisdiction to address matters involving attorney's fees and costs and other activities in a dismissed Chapter 11 case. *In the Matter of Post v. Ewing,* 119 B.R. 566 (D.C.S.D. Ohio 1989); *In the Matter of Samford, (Willis v. Cruse),* 125 B.R. 230 (D.C.E.D. Mo. 1991).

Clearly, the Bankruptcy Court was dealing with a proceeding in the context of the above *Post v. Ewing* case and *In the Matter of Samford.* The issue was joined on motions to disgorge fees, opposition to a discharge statement and an opposition to the confirmation of a Plan of Reorganization. The subsequent dismissal arranged between the Trustee and Alimadad Jatoi could not act to deprive the court of jurisdiction to enter nunc pro tunc orders on issues resolved by a full hearing and an announced ruling in open court.

CONCLUSION

Accordingly, proper grounds for invoking this Honorable Court's review by writ of certiorari do not exist. A denial of the Petition for Writ of Certiorari will properly close this issue in this case after three (3) years and nine (9) months, and justice will have prevailed. This Honorable Court should deny the Petition for Writ of Certiorari of Alimadad Jatoi.

Respectfully submitted,

WILLIAM C. MEIER
Texas Bar No. 13909000
Counsel of Record
MEIER & PARKER, L.C.
Attorneys for Respondent
Central Park Tower
2350 Airport Freeway, Suite 660
Bedford, Texas 76022
(817) 283-9528

APPENDIX A — MOTION TO ENTER SEPARATE ORDER WITH EXHIBITS

LAW OFFICE OF WILLIAM C. MEIER
& ASSOCIATES
Central Park Tower
2350 Airport Freeway, Suite 660
Bedford, Texas 76022
817/283-9528; metro 540-5295
Fax — 817/545-9042

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CASE NO. 487-42139-11

IN RE:

ALIMADAD JATOI,

DEBTOR

MOTION TO ENTER SEPARATE ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW LAW OFFICE OF WILLIAM C. MEIER & ASSOCIATES, P.C., and moves this Court for an order granting judgment and for such pleading would respectfully show the Court as follows:

1. By Order signed October 25, 1991, Honorable John McBryde, United States District Judge, sitting as an appellate Judge in this case, signed an Order referring this case to this Honorable Court "for entry of a separate document constituting a final judgment as required by Bankruptcy Rule 9021(a)".

2. That Order resulted from an Opinion of the Fifth Circuit Court of Appeals which mandated that the case on appeal be remanded to the United States District Court for an initial decision on the merits of the cause.

3. The basis of the appeal was a document entitled "Nunc Pro Tunc Order Regarding Attorney's Fees and Expenses" (a copy of which is attached hereto as Exhibit "1"). The Fifth Circuit Court of Appeals Opinion merely determined that a separate judgment should be entered in addition to that Order which Appellant JATOI contended was a fact finding and not a final order.

4. Accordingly, consistent with the mandate of the Fifth Circuit Court of Appeals and the Order of the United States District Court, Movant LAW OFFICE OF WILLIAM C. MEIER & ASSOCIATES, P.C. requests that this Court enter a separate order constituting a separate judgment, consistent with Bankruptcy Rule 9021(a) and Federal Rule of Civil Procedure 58, in the form attached to this Motion.

WHEREFORE, Movant prays that the Court enter its final judgment in this cause.

Respectfully submitted,

s/ William C. Meier
WILLIAM C. MEIER
Texas Bar No. 13909000

Appendix A

LAW OFFICE OF WILLIAM C. MEIER
& ASSOCIATES
Central Park Tower
2350 Airport Freeway, Suite 660
Bedford, Texas 76022
817/283-9528; metro 540-5295
Fax — 817/545-9042

ATTORNEYS FOR LAW OFFICE OF
WILLIAM C. MEIER & ASSOCIATES,
P.C.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was served upon Michael D. Mosher, American Legion Building, 26 Northeast Second Street, Paris, Texas 75460, Attorney for Debtor, by placing same in the United States mail, certified mail, return receipt requested, this 6 day of December, 1991.

s/ William C. Meier
William C. Meier

Appendix A

[EXHIBIT "1"]

[stamped]
ENTERED
JAN 10 1990
United States Bankruptcy Court
Northern District of Texas

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CASE NO. 487-42139-11

IN RE:

ALIMADAD JATOI,

DEBTOR.

NUNC PRO TUNC ORDER
REGARDING ATTORNEY'S FEES AND EXPENSES

On the 19th day of December, 1989, came on to be heard the objection of WILLIAM C. MEIER, of the LAW OFFICE OF WILLIAM C. MEIER & ASSOCIATES, P.C., one of the creditors listed in the Debtor's Disclosure Statement and Plan of Reorganization in the above bankruptcy, and came on to be heard the Debtor, ALIMADAD JATOI, in person and by and through his attorney of record, Joe Abbey, and came on to be heard WILLIAM C. MEIER of the LAW OFFICE OF WILLIAM C. MEIER & ASSOCIATES, P.C., and the Court, upon hearing opening statement of counsel, the stipulations as to evidence and testimony, and argument of counsel, makes the following findings of fact and conclusions of law:

Appendix A

1. The Court finds that the LAW OFFICE OF WILLIAM C. MEIER & ASSOCIATES, P.C. performed legal services after the date of filing of a bankruptcy petition, and upon the grant of authority and approval of the Court, that legal services were rendered to the Debtor-in-Possession, ALIMADAD JATOI, by the LAW OFFICE OF WILLIAM C. MEIER & ASSOCIATES, P.C., and expenses incurred, which legal services and expenses were the subject of applications for the payment of fees and expenses and which applications for payment of fees and expenses were fully approved by the Court as reasonable in amount and appropriate according to their terms, so that reasonable fees and expenses are due and payable from Debtor-in-Possession, ALIMADAD JATOI, to the LAW OFFICE OF WILLIAM C. MEIER & ASSOCIATES, P.C. in the full amount of FOURTEEN THOUSAND NINE HUNDRED SIXTY-TWO AND 07/100 DOLLARS ($14,962.07); and

2. That the attorney's fees and expenses in the amount of FOURTEEN THOUSAND NINE HUNDRED SIXTY-TWO AND 07/100 DOLLARS ($14,962.07) should be properly included as an administrative expense and an administrative claim under the provisions of Section 5.03(b) and/or 5.07(a)(1), (3), (4) or (6) of the Bankruptcy Code, and should have been listed as a Class 1 claim under the Plan of Reorganization filed by the Debtor herein; and

3. The Court further finds that WILLIAM C. MEIER and the LAW OFFICE OF WILLIAM C. MEIER & ASSOCIATES, P.C. performed reasonable and necessary legal services to ALIMADAD JATOI and others prior to the time of the filing of the bankruptcy petition, which fees and expenses total the amount of FORTY-ONE THOUSAND TWO HUNDRED SIXTY-ONE AND NO/100 DOLLARS ($41,261.00); and

4. The Court further finds that WILLIAM C. MEIER was listed as a creditor of Debtor by Debtor ALIMADAD JATOI at the time of the filing of the Chapter 11 bankruptcy, and that the claim of FORTY-ONE THOUSAND TWO HUNDRED SIXTY-ONE AND NO/100 DOLLARS ($41,261.00) for attorney's fees and expenses has been properly filed as a claim against the Debtor in this proceeding; and

5. The Court further finds that ALIMADAD JATOI agreed to make payment to the LAW OFFICE OF WILLIAM C. MEIER & ASSOCIATES, P.C. in the amount of FORTY-ONE THOUSAND TWO HUNDRED SIXTY-ONE AND NO/100 DOLLARS ($41,261.00) in hourly fees charges for attorney's fees performed prior to the time of the filing of the bankruptcy, and that such charges are reasonable and necessary charges in the litigation styled "*Amega Construction, Inc. v. Dr. Alimadad Jatoi, et al*", currently pending in the United States District Court for the Northern District of Texas; and

6. The Court further finds that the LAW OFFICE OF WILLIAM C. MEIER & ASSOCIATES, P.C. asserts an attorney's lien against the books, records and papers in its possession securing payment of claims for attorney's fees due and owing by ALIMADAD JATOI and others;

IT IS, ACCORDINGLY, ORDERED, ADJUDGED AND DECREED that the LAW OFFICE OF WILLIAM C. MEIER & ASSOCIATES, P.C. have and recover judgment against ALIMADAD JATOI for attorney's fees and expenses rendered to him after the filing of a Chapter 11 petition in bankruptcy in the amount of FOURTEEN THOUSAND NINE HUNDRED SIXTY-TWO AND 07/100 ($14,962.07).

Appendix A

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the LAW OFFICE OF WILLIAM C. MEIER & ASSOCIATES, P.C. have and recover from ALIMADAD JATOI reasonable and necessary attorney's fees incurred prior to the filing of the petition in bankruptcy under Chapter 11 in the amount of FORTY-ONE THOUSAND TWO HUNDRED SIXTY-ONE AND NO/100 DOLLARS ($41,261.00).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any Plan of Reorganization on the part of ALIMADAD JATOI hereafter filed include as administrative fees and expenses the amount of FOURTEEN THOUSAND NINE HUNDRED SIXTY-TWO AND 07/100 ($14,962.07) due and payable to the LAW OFFICE OF WILLIAM C. MEIER & ASSOCIATES, P.C.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any Plan of Reorganization hereafter filed on the part of ALIMADAD JATOI include the amount of FORTY-ONE THOUSAND TWO HUNDRED SIXTY-ONE AND NO/100 DOLLARS ($41,261.00) as a secured claim on the part of the LAW OFFICE OF WILLIAM C. MEIER & ASSOCIATES, P.C., secured by the books, records and papers in the possession of the LAW OFFICE OF WILLIAM C. MEIER & ASSOCIATES, P.C.

FILED January 10, 1990.

ORDER EFFECTIVE AS OF
12-19-89

ORIGINAL SIGNED BY
MASSIE TILLMAN
UNITED STATES BANKRUPTCY JUDGE

Appendix A

[EXHIBIT "2"]

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CASE NO. 487-42139-11

IN RE:

ALIMADAD JATOI,

DEBTOR

ORDER

Pursuant to findings of fact and conclusions of law included in a document entitled "Nunc Pro Tunc Order Regarding Attorney's Fees and Expenses" filed on January 10, 1990, final judgment is entered in this regard that:

IT IS HEREBY ORDERED that the LAW OFFICE OF WILLIAM C. MEIER & ASSOCIATES, P.C. have and recover from ALIMADAD JATOI the sum of FOURTEEN THOUSAND NINE HUNDRED SIXTY-TWO AND 07/100 DOLLARS ($14,962.07) for attorney's fees and expenses resulting after the filing of a Chapter 11 Petition in Bankruptcy.

IT IS FURTHER ORDERED that the LAW OFFICE OF WILLIAM C. MEIER & ASSOCIATES, P.C. have and recover from ALIMADAD JATOI the additional amount of FORTY-ONE THOUSAND TWO HUNDRED SIXTY-ONE AND NO/100 DOLLARS ($41,261.00) for attorney's fees and expenses resulting prior to the filing of a Chapter 11 Petition in Bankruptcy.

Appendix A

This Order shall constitute a final judgment as to this portion of Bankruptcy Case NO. 487-42139-11.

SIGNED December __, 1991.

UNITED STATES BANKRUPTCY JUDGE

APPENDIX B — NUNC PRO TUNC ORDER SIGNED DECEMBER 16, 1991

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

[stamped]
ENTERED
DEC 17 1991
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
MICHAEL W. YOUDIN, CLERK

CASE NO. 487-42139-11

IN RE:

ALIMADAD JATOI,

DEBTOR

NUNC PRO TUNC ORDER

On the 19th day of December, 1989, came on for hearing the objection of William C. Meier to the Motion of Debtor to have the attorneys' fees and expenses disgorged. In accordance with the Findings of Fact and Conclusions of Law entered on the 10th day of January, 1990, this court finds that the fees and expenses of William C. Meier should be allowed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that reasonable fees and expenses are due and payable from the Debtor in the amount of $14,962.07.

IT IS FURTHER ORDERED that William C. Meier recover attorneys' fees incurred prior to the filing of the bankruptcy in the amount of $41,261.00.

Appendix B

SIGNED this 16 day of December, 1991.

s/ Massie Tillman
HONORABLE MASSIE TILLMAN
UNITED STATES BANKRUPTCY JUDGE

APPENDIX C — LETTER OF JULY 1, 1992 TO ATTORNEYS MICHAEL D. MOSHER AND WILLIAM C. MEIER FROM UNITED STATES DISTRICT COURT CLERK NANCY DOHERTY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
202 U.S. Courthouse
Fort Worth, Texas 76102

Nancy Doherty
Clerk of Court

July 1, 1992

Michael D. Mosher
26 N.E. 2nd St
Paris, TX 75460

William C. Meier
2350 Airport Freeway Ste 660
Bedford, TX 76022

RE: Alimadad Jatoi vs. William C. Meier
Bankruptcy Number: 487-42139-MT
New Cause Number: 4:92-cv-488 A

Dear Sirs:

Please note that the above referenced case has been appealed to the United States District Court for the Northern District of Texas, Fort Worth Division. The case has been assigned a new civil action number which is 4:92-cv-488 A. All pleadings filed in this case hereafter should be directed to the District Clerk at the above referenced address and should be styled using the new civil action number.

Appendix C

Thank you for your cooperation.

Sincerely,

Nancy Doherty
Clerk of Court

s/ Cherry E. Whatley
Cherry E. Whatley
Deputy District Clerk

RECEIVED
July 2 1992

APPENDIX D — BANKRUPTCY NOTICE

Alimadad Jatoi, 503-54-2236
819 East Highway 190
Copperas Cove, TX 76522

United States Bankruptcy Court
Western District of Texas
600 Austin Ave., Suite 20
Waco, TX 76701

ORDER COMBINED WITH NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER 11 OF THE BANKRUPTCY CODE, MEETING OF CREDITORS, AND FIXING OF DATES
(individual or Joint Debtor Case)

Case Number: 93-60768 LEK
Date Filed (or Converted): 08/25/93

William C. Meier, Esq.
Central Park Tower
2350 Airport Frwy., Ste 660
Bedford, Texas 76022

IN RE (NAME OF DEBTOR)
Alimadad Jatoi, 503-54-2236

ADDRESS OF DEBTOR
819 East Highway 190
Copperas Cove, TX 76522

ATTORNEY FOR DEBTOR
Pro se

TRUSTEE

Telephone Number:

Telephone Number:

MEETING OF CREDITORS
October 1, 1993 at 10:00 am
St. Charles Place, Suite 20
600 Austin Ave.
Waco, TX 76701

Filing Claims/Interests: Deadline to File a Proof of Claim or Proof of Interest is 12/30/93

Appendix D

Discharge of Debts: Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Types of Debts: 11/30/93

COMMENCEMENT OF CASE. A petition for reorganization under chapter 11 of the Bankruptcy Code has been filed in this court and an order for relief has been entered. All documents filed with the court are available for inspection at the office of the clerk of the bankruptcy court.

CREDITORS MAY NOT TAKE CERTAIN ACTIONS. Under the Bankruptcy Code, the debtor is granted certain protection against creditors. A creditor who is considering taking action against the debtor or the property of the debtor should review Section 362 of the Bankruptcy Code and may wish to seek legal advice. The staff of the clerk of the bankruptcy court is not permitted to give legal advice.

MEETING OF CREDITORS. The debtor (both husband and wife in a joint case) is required to appear at the meeting of creditors on the date and at the place set forth above for the purpose of being examined under oath. Attendance by creditors at the meeting is welcomed, but not required. At the meeting, the creditors may elect a trustee other than the one named above, elect a committee of creditors, examine the debtor, and transact such other business as may properly come before the meeting. The meeting may be continued or adjourned from time to time by notice at the meeting, without further written notice to creditors.

EXEMPT PROPERTY. Under state and federal law, the debtor is permitted to keep certain property as exempt. If a creditor believes that an exemption of money or property is not authorized by law, the creditor may file an objection not later than 30 days after the conclusion of the meeting of creditors.

Appendix D

DISCHARGE OF DEBTS. The debtor is seeking a discharge of debts. A discharge means that certain debts are made unenforceable against the debtor personally. Creditors whose claims against the debtor are discharged may never take action against the debtor to collect the discharged debts. If a creditor believes that the debtor should not receive any discharge of debts under Sec. 1141(d) (3)(C) of the Bankruptcy Code, timely action must be taken in the bankruptcy court in accordance with Bankruptcy Rule 4004 (a). If a creditor believes that a debt is not dischargeable under Section 523 (a) (2), (4), or (6) of the Bankruptcy Code, timely action must be taken in the bankruptcy court by the deadline set forth above labeled "Discharge of Debts."

PROOF OF CLAIM/INTEREST. Schedule of liabilities have been or will be filed pursuant to Bankruptcy Rule 1007. Any creditor or equity security holder holding a scheduled claim which is not listed as disputed, contingent, or unliquidated as to amount may, but is not required to, file a proof of claim or proof of interest in this case. Creditors or equity security holders whose claims are not scheduled or whose claims are listed as disputed, contingent, or unliquidated as to amount and who desire to participate in the case or share in any distribution must file their proofs of claim or proofs of interest. A creditor or equity security holder who desires to rely on the schedules of creditors has the responsibility for determining that the claim is listed accurately. Any claim or interest filed must be filed by the date set forth above labeled "Filing claims/ Interests". The place to file a proof of claim or proof of interest, either in person or by mail, is the office of the clerk of the bankruptcy court. Proof of claim forms are available in the clerk's office of any bankruptcy court. Pursuant to Local Rule 3002 (b) a copy with attachments shall be served on the debtor's attorney.

FAILURE OF THE DEBTOR OR HIS ATTORNEY TO APPEAR AT THE SECTION 341 (a) MEETING OR TO TIMELY FILE

Appendix D

SCHEDULES AND STATEMENT OF AFFAIRS MAY RESULT IN DISMISSAL, DENIAL OF THE DEBTOR'S DISCHARGE, OR OTHER APPROPRIATE RELIEF.

For the Court: Lawrence T. Bick
Clerk of the Bankruptcy Court
09/01/93
Date

Form B9ELCB
0011

APPENDIX E — ORDER OF THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF TEXAS, FORT WORTH DIVISION, FILED NOVEMBER 16, 1992

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

[stamped]
U.S. District Court
Northern District of Texas
FILED NOV 16 1992
Nancy Doherty, Clerk
s/ B. Garner mgm

NO. 4:92-CV-488-A

IN RE:

ALIMADAD JATOI,

Debtor.

ALIMADAD JATOI,

Appellant,

VS.

WILLIAM C. MEIER & ASSOCIATES, P.C.,

Appellee.

ORDER

This is an appeal from an order of the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, the Honorable Massie Tillman presiding. The record on appeal was transmitted to the District Clerk on July 1, 1992, and

the appeal was docketed on July 7, 1992. Consequently, the brief of appellant, Alimadad Jatoi, was due on or before July 22, 1992. Bankr. R. 8009 (a) (1). Because appellant's brief was not timely filed, by memorandum opinion and order and final judgment signed July 27, 1992, the court ordered that the appeal be dismissed.[1] Thereafter, on August 26, 1992, appellant filed his notice of appeal. Consequently, this court no longer has jurisdiction of this action. *See, e.g., Venen v. Sweet,* 758 F.2d 117, 120 (3rd Cir. 1985); *G & M, Inc. v. Newbern,* 488 F.2d 742, 746 (9th Cir. 1973).

Now pending is an agreed motion[2] filed September 29, 1992, for reinstatement of appeal.[3] The court would not be inclined to grant the motion because it is familiar with the history of this appeal and tends to believe that the appeal is frivolous.[4] The court

---

1. The court is aware that a person purporting to be an attorney (or a member of an attorney's staff) acting on behalf of appellant contacted the District Clerk's office prior to the time appellant's brief was due to inquire about the status of the action and to determine the date upon which the appeal was docketed. The caller was advised at least twice of the date the appeal was docketed. Instead of filing an appropriate motion for extension of time to file an appellate brief, appellant's attorney apparently chose not to take any further action.

2. The motion does not reflect that all facts, including those set forth in footnote 1, *supra,* were disclosed to appellee, William C. Meier & Associates, P.C., at the time it was induced not to oppose the motion to reinstate appeal.

3. The court notes that, even if timely filed, this is not a motion of the kind described in Fed. R. App. P. 4 (a) (4) that would nullify the effect of the notice of appeal.

4. The court bases its opinion on the facts of this case and not on the behavior of appellant in other cases, such as the case wherein the Fifth Circuit has sanctioned appellant for his activities.

understands that a motion pursuant to Fed. R. Civ. P. 60 (b) may be denied without leave of the appellate court. *See Venen,* 758 F.2d at 123. Nevertheless, during a telephone conference hearing on November 10, 1992,[5] appellee expressed the desire that the appeal be decided on its merits notwithstanding the history of the action. The court does not have jurisdiction to grant the motion and to reinstate the appeal without leave of the appellate court. *Id.* Therefore,

The court ORDERS that the agreed motion for reinstatement of appeal be, and is hereby, held in abeyance pending some action by appellant to cause the action to be remanded to this court or to cause the appeal to be reinstated.

SIGNED November 16, 1992.

s/ John McBryde
JOHN McBRYDE
United States District Judge

---

5. Appellant, Alimadad Jatoi, and appellee, William C. Meier and Associates, P.C., appeared via telephone by and through their attorneys of record. The proceeding was recorded by the court reporter.

APPENDIX F — LETTER OF AUGUST 19, 1992 FROM WILLIAM C. MEIER TO DR. ALIMADAD JATOI WITH ATTACHMENTS

MEIER & PARKER, L.C.
ATTORNEYS AND COUNSELORS AT LAW
Central Park Tower
2350 Airport Freeway, Suite 660
Bedford, Texas 76022

817/283-9528
Metro 817/540-5295

William C. Meier
D. Brad Clinkenbeard
(Licensed in Louisiana only)

August 19, 1992

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Dr. Alimadad Jatoi
2520 Harwood Road
Suite 400, Box 8
Bedford, Texas 76021

Dear Dr. Jatoi:

Enclosed are the following:

1. Letter dated July 1, 1992 from Cherry E. Whatley noting the appeal of the order entered by Judge Massie Tillman in the Bankruptcy Court on December 16, 1991 was docketed as Cause No. 4:92-CV-488-A;

Appendix F

2. Memorandum Opinion and Order signed by Judge John McBryde on July 27, 1992;

3. Final Judgment of Dismissal signed by Judge McBryde on July 27, 1992.

These items are being sent to you consistent with the form entitled "Consent to Motion to Withdraw as Attorney for Appellant" dated February 18, 1992 and signed by you.

Sincerely,

s/ William C. Meier
William C. Meier

WCM/cpn
Encl.

Appendix F

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
202 U.S. Courthouse
Fort Worth, Texas 76102

Nancy Doherty
Clerk of Court

July 1, 1992

Michael D. Mosher
26 N.E. 2nd St
Paris, TX 75460

William C. Meier
2350 Airport Freeway Ste 660
Bedford, TX 76022

RE: Alimadad Jatoi vs. William C. Meier
Bankruptcy Number: 487-42139-MT
New Cause Number: 4:92-cv-488 A

Dear Sirs:

Please note that the above referenced case has been appealed to the United States District Court for the Northern District of Texas, Fort Worth Division. The case has been assigned a new civil action number which is 4:92-cv-488 A. All pleadings filed in this case hereafter should be directed to the District Clerk at the above referenced address and should be styled using the new civil action number.

Thank you for your cooperation.

Sincerely,

Nancy Doherty
Clerk of Court

s/ Cherry E. Whatley
Cherry E. Whatley
Deputy District Clerk

RECEIVED
July 2, 1992

Appendix F

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

[stamped]
U.S. District Court
Northern District of Texas
FILED
JUL 27 1992
Nancy Doherty, Clerk
By: s/BG, Deputy

NO. 4:92-CV-488-A

IN RE:

ALIMADAD JATOI,

Debtor

ALIMADAD JATOI,

Appellant,

vs.

WILLIAM C. MEIER,

Appellee.

MEMORANDUM OPINION
AND
ORDER

Appendix F

Came on for consideration the above-styled and numbered action. This appeal was docketed in this court on July 7, 1992. Appellant's brief on appeal was due fifteen days thereafter. Bankr. R. 8009. The record on appeal reflects that appellant has failed to file his brief as required. Accordingly, the court finds that the above-styled and numbered action should be dismissed. *International Brotherhood of Teamsters v. Braniff Airways, Inc.* (In re Braniff Airways, Inc.), 774 F.2d 1303, 1305 (5th Cir. 1985). Therefore,

The court ORDERS that the above-styled and numbered action be, and is hereby, dismissed.

SIGNED July 27, 1992.

s/ John McBryde
JOHN McBRYDE
United States District Judge

Appendix F

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

[stamped]
U.S. District Court
Northern District of Texas
FILED
JUL 27 1992
Nancy Doherty, Clerk
By: s/BG, Deputy

NO. 4:92-CV-488-A

IN RE:

ALIMADAD JATOI,

Debtor

ALIMADAD JATOI,

Appellant,

vs.

WILLIAM C. MEIER,

Appellee.

FINAL JUDGMENT OF DISMISSAL

Appendix F

In accordance with the court's memorandum opinion and order of even date herewith,

The court ORDERS, ADJUDGES, and DECREES that the above-styled and numbered action be, and is hereby, dismissed. The court further ORDERS, ADJUDGES and DECREES that appellant, Alimadad Jatoi, bear all costs of court with regard to this appeal.

SIGNED July 27, 1992.

s/ John McBryde
JOHN McBRYDE
United States District Judge

Appendix F

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece next to the article number.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery
Consult postmaster for fee.

3. Article Addressed to:
Dr Ahmadad Qatai
2520 Harwood Road
Suite 400, Bay 8
Bedford, Texas 76021

4a. Article Number
P 397 190 918

4b. Service Type
☐ Registered ☐ Insured
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5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

PS Form 3811, October 1990 *U.S. GPO: 1990—273-861 DOMESTIC RETURN RECEIPT

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Appendix F

P 357 190 918

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Street and No.	2520 Harwood Road
P.O., State and ZIP Code	Suite 420, Box 8
Postage	Bedford, Texas 7602
Certified Fee	
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Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	$
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PS Form 3800, June 1991

Supreme Court, U.S.
FILED
SEP 21 1993
OFFICE OF THE CLERK

No. 93-211

In The

Supreme Court of the United States

October Term, 1993

ALIMADAD JATOI,

Petitioner,

v.

WILLIAM C. MEIER,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

REPLY BRIEF OF PETITIONER

MICHAEL R. COOPER
MARSHAL W. DOOLEY
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3300 Oak Lawn, Suite 602
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(214) 443-0000
Counsel for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

ARGUMENTS FIRST RAISED IN BRIEF IN OPPOSITION

1. Notification by letter from the United States District Clerk's Office on July 1, 1992, that an appeal from an Order of the Bankruptcy Court had been assigned a new Civil Action Number is sufficient notice of docketing of the appeal notwithstanding the fact that the appeal was not docketed until July 7, 1992.

2. The fact that approximately $41,261.00 in attorneys' fees allegedly incurred by William C. Meier against Alimadad Jatoi prior to the filing of a bankruptcy petition by Alimadad Jatoi was alluded to in a claim, objection to claim, objection to the Debtor's Plan of Reorganization and other motions was sufficient to allow the Bankruptcy Judge to enter a Money Judgment against the Debtor for such amount after the dismissal of the bankruptcy.

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No. 93-211

In The

Supreme Court of the United States

October Term, 1993

ALIMADAD JATOI,

Petitioner,

v.

WILLIAM C. MEIER,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

REPLY BRIEF OF PETITIONER

Petitioner, Alimadad Jatoi, respectfully offers this Reply to Respondent's Brief in Opposition to Petition for Writ of Certiorari.

I.

CORRECTION OF ERRORS IN STATEMENT OF THE CASE BY RESPONDENT

Respondent has incorrectly stated certain matters in his Statement of the Case found on pages 2 and 3 of Respondent's Brief in Opposition to Petition for Writ of Certiorari.

The first error has to do with paragraph 7 on page 2 of Respondent's brief where he states that the Motion of William C. Meier to Withdraw as Counsel of Record and Motion to Require Debtor to Pay Attorney's Fees previously ordered by the Court, found on pages 1(a) through page 4(a) of the Appendix was the subject of a hearing on December 19, 1989.

Such statement is clearly factually incorrect. The only issue before the Court on December 19, 1989, had to do first with the objection to and the confirmation of the Debtor's, Alimadad Jatoi, ("Jatoi") Plan of Reorganization; second, the Motion for Certain Fees of William C. Meier ("Meier") to be disgorged, and third, the objection to the claim of William C. Meier.

Meier's Motion to Withdraw as Counsel of Record and Motion to Require Debtor to Pay Attorney's Fees previously ordered by the Court was clearly not before the Court as set forth on page 25 of the Transcript of the Hearing on Confirmation, Motion for Fees of William C. Meier to be Disgorged, and Objection to Claim to William C. Meier, which such pages are found on page 5(a) of the Appendix to this Reply, and where it is stated as follows:

(P. 25, Line 13-25, P. 26, Line 1-13)

> "Your Honor, I have brought with me to Court Motion to Withdraw as Counsel for Dr. Alimadad Jatoi in light of the fact that we have not been able to resolve this matter, hoping that – I've not filed it previously, hoping that it could be resolved right down to the last day of the time of this hearing. Hasn't been, and I brought a Motion with me today to file, if that is the –

> that looks as though that's going to be the circumstances needed to be accomplished, and after we finish the hearing, I'll take it upstairs and file it and ask the Court to schedule it for a hearing at a future date, if that's – if that's – and that's the procedure we need to follow, I guess, because all the other people that are involved in this litigation.
>
> "The Motion to Withdraw is prepared for filing in the Bankruptcy Court. I would – as I read the Rules, need to file a similar motion to withdraw from the representation of the interest of Dr. Alimadad Jatoi in the pending court case in the Federal Court – in the U. S. Federal Court for the Northern District that is here now pending. I believe this is now scheduled for hearing in Judge Belew's Court, Judge Mahon having recused himself."

As the foregoing testimony shows, the Motion of Meier to Withdraw as Counsel of Record and to Require Debtor to pay Attorney's Fees previously ordered by the Court was not even filed with the Bankruptcy Court at the time of the hearing on December 19, 1989. Further, it was clearly not ruled on at the hearing as can be seen from the Transcript of the testimony on p.30 which is found in the Appendix at page 6(a), which reads as follows:

> (P. 30, Line 13-25)
>
> "The Court: Alright. The objections by Debtor to the claim of Mr. Meier are overruled, and that claim is allowed. Mr. Meier's objection to the Plan will be sustained, and the Debtor's Motion for Mr. Meier's fees to be Disgorged is overruled. Mr. Meier would you please prepare three

> separate Orders for me, please sir, on each of those three matters. Mr. Meier: Yes, your Honor. The Court: I want a separate Order on each one."

Further, contrary to the statement by Mr. Meier on page 3 of his Responsive Brief to the Petition for Writ of Certiorari, there was never any notice of docketing of the appeal in compliance with Rule 8007(b) of the Bankruptcy Rules. Contained on page 7(a) through 8(a) of the Appendix is a sample of a Notice of Docketing of Appeal customarily sent by the United States District Court for the Northern District of Texas. A comparison of that document with the letter referred to in Mr. Meier's Responsive Brief found on pages 12(a) through 13(a) of the Appendix to such Brief clearly shows that it does not constitute a notice of docketing of the appeal. Further, the letter is dated July 1, 1992, and the appeal was not even docketed until July 7, 1992. (See front page of Vol. 1 of Rec.).

ARGUMENT AND AUTHORITIES

1. **NOTIFICATION BY LETTER FROM THE UNITED STATES DISTRICT CLERK'S OFFICE ON JULY 1, 1992, THAT AN APPEAL FROM AN ORDER OF THE BANKRUPTCY COURT HAD BEEN ASSIGNED A NEW CIVIL ACTION NUMBER IS SUFFICIENT NOTICE OF DOCKETING OF THE APPEAL NOTWITHSTANDING THE FACT THAT THE APPEAL WAS NOT DOCKETED UNTIL JULY 7, 1992.**

2. **THE FACT THAT APPROXIMATELY $41,261.00 IN ATTORNEYS' FEES ALLEGEDLY INCURRED BY WILLIAM C. MEIER AGAINST ALIMADAD JATOI PRIOR TO THE FILING OF A BANKRUPTCY PETITION BY ALIMADAD JATOI WAS ALLUDED TO IN A CLAIM, OBJECTION TO CLAIM, OBJECTION TO THE DEBTOR'S PLAN OF REORGANIZATION AND OTHER MOTIONS WAS SUFFICIENT TO ALLOW THE BANKRUPTCY JUDGE TO ENTER A MONEY JUDGMENT AGAINST THE DEBTOR FOR SUCH AMOUNT AFTER THE DISMISSAL OF THE BANKRUPTCY.**

The arguments made in Respondent's Brief in Opposition to the Petition for Writ of Certiorari filed by Jatoi only served to emphasize the fundamental lack of due process occasioned by a money judgment being entered against Jatoi on December 16, 1991, by the Bankruptcy Judge in the amount of $41,261.00. The Respondent's Brief in Opposition to the Petition for Writ of Certiorari contains the same type and kind of misstatements and misunderstandings of what actually took place in the Bankruptcy Court on December 19, 1989 and thereafter, which have plagued this case from inception.

First, Bankruptcy Rule 8007(b) coupled with Bankruptcy Rule 8009(a)(1) clearly establishes (i) the mechanism from which the time to file an appellant's brief begins, and (ii) the time in which the Appellant has to file his brief from that event.

Bankruptcy Rule 8007(b) provides that the record on appeal shall be transmitted by the Bankruptcy Clerk to the Clerk of the District Court and that on receipt of such record:

> "The Clerk of the District Court or the Clerk of the Bankruptcy Appellant Panel shall enter the appeal in the docket and give notice promptly to all parties to the judgment, order or decree appealed from of the date on which the appeal was docketed."

The purpose for such requirement is obvious when one reads Bankruptcy Rule 8009. It is the date of docketing of the appeal that the fifteen (15) days begins to run from in which the Appellant has to file an Appellant's Brief. *See* Bankruptcy Rule 8009(a)(1). As can be seen from a comparison of the letter referred to on pages 12(a) through 13(a) of the Appendix to Respondent's Brief in Opposition and the Notice of Docketing of Appeal referred to on page 6(a) of the Appendix to the Reply Brief of Petitioner, in the case before the Court, no notice of docketing of the appeal was ever sent. In fact, the letter referred to in Respondent's Brief in Opposition bears a date six (6) days earlier than the date upon which the appeal was actually docketed in the District Court. (See front page of Vol. 1 of Record.)

The allegations set forth on pages 5 through 7 of Respondent's Brief in Opposition are inappropriate,

immaterial and irrelevant to the issues before this Honorable Court. Those allegations have to do with a former case of the Petitioner and not with the case before the Court, and to attempt to ingraft the facts of that case onto this case is inappropriate and irrelevant to the issues before this Court.

The fundamental lack of due process afforded Jatoi in this matter arises out of the Bankruptcy Judge entering a money judgment against him in the amount of $41,261.00 on December 16, 1991, at a time when no adversary proceeding or proceeding that could be remotely construed as an adversary proceeding existed on the part of Meier seeking a money judgment, and at a time when the bankruptcy had been dismissed and the Court no longer had any jurisdiction of a "non-core" adversary proceeding.

In order to obtain a money judgment against Jatoi for attorney's fees incurred prior to the filing of the Bankruptcy Petition it would have been necessary for Meier to have brought a proceeding to recover money or property against Jatoi. Such a proceeding under Rule 7001 of the Bankruptcy Rules is clearly an adversary proceeding. See *In Re: Williams,* 13 B.R. 640 (U.S.B.C. E.D. Wash. 1981). None of the pleadings or issues which were before the Bankruptcy Court on December 19, 1989, were proceedings to recover money. The only proceedings which were before the Bankruptcy Court on that date were (i) the Motion of Jatoi for Fees of William C. Meier to be Disgorged (see page 9(a) through 13(a) of Appendix and the Response thereto (pages 14(a) through 17(a) of Appendix); the Objection to the Claim of William C. Meier (see pages 18(a) through 21(a) of Appendix) and the Response

thereto (see pages 22(a) through 28(a) of the Appendix) and Objection to Jatoi's Proposed Plan of Reorganization (see pages 29(a) through 32(a) of Appendix). None of said pleadings sought the recovery of money or joined the issue in the form of an adversary proceeding which would have entitled the Bankruptcy Judge to have entered a money judgment against Jatoi with respect to the pre-petition attorney's fees alleged to have been incurred by Meier.

An examination of the Motion to Disgorge Fees (see Appendix pages 1(a) through 3(a) of Petitioner's Reply Brief) clearly showed that the sole issue raised in that pleading had to do with a specific case (*A. M. Jatoi v. Park Center, Inc., et al*) in which Meier had settled the case and had placed certain funds in his trust account and Jatoi was seeking an accounting for those funds. None of this pleading has anything to do with the $41,261.00 in pre-petition attorney's fees which Meier alleges he was owed. Further, none of these pleadings could be constituted an adversary proceeding pursuant to Rule 3007 of the Bankruptcy Rules. Rule 3007 provides that an objection to a claim joined with a demand for relief of a kind specified in Rule 7001 may constitute an adversary proceeding. No where in any of the responsive pleadings filed by Jatoi to the claim of Meier or other responsive pleadings before the Court at the time of the December 19, 1989 hearing, or in any of the pleadings filed by Meier was a demand for relief of a kind specified in Rule 7001 sought.

The two cases cited by Meier *In the Matter of Post v. Ewing*, 119 B.R. 566 (D.C.S.D. Ohio 1989); and *In the Matter of Sanford (Willis v. Cruz)*, 125 B.R. 230 (D.C.E.D. Mo. 1991) clearly are not applicable to this case. In the

Post case, *supra*, the attorney for the Debtor during the pending of a bankruptcy demanded a payment from the debtor for his post-petition services without obtaining approval of the Bankruptcy Court. The Bankruptcy Judge subsequently dismissed the bankruptcy and ordered the debtor's attorney to return the fees he had obtained from the debtor without bankruptcy court approval. All that *Post v. Ewing* stands for which has clearly been recognized is that a bankruptcy court retains jurisdiction to construe their own orders and to see that orders entered prior to the dismissal of the bankruptcy are followed.

Likewise, the case of *In Re: Sandford* stands for the same proposition. The facts of that case involve an attorney who had obtained fees from the debtor following confirmation of a Plan of Reorganization and before the dismissal of the bankruptcy for work to be done in conjunction with a state court lawsuit. These fees and the retention of the attorney were without authorization from the bankruptcy court and subsequently the bankruptcy court ordered the attorney to file an accounting for such fees and seek approval of same. Subsequently, the attorney, never having filed such an accounting, the bankruptcy court dismissed the case and retained jurisdiction regarding such matters.

Finally, Jatoi would argue that an action by Meier to recover $41,261.00 in pre-petition attorney fees from him even if brought in the context of an adversary proceeding would not be a core proceeding and accordingly the bankruptcy court would not retain jurisdiction of same after dismissal. A core proceeding is one that has as its foundation the creation, recognition or adjudication of

rights which would not exist independent of a bankruptcy involvement. Clearly, Meier's claim for pre-petition attorney's fees did not depend upon the Bankruptcy Court's involvement and did not have its foundation in rights created thereby. A "non-core" proceeding is a proceeding that is "otherwise related" to a case under Title 11. Clearly Meier's claim for pre-petition attorney's fees would constitute a proceeding "otherwise related" to a case under Title 11 and had it been brought in the form of an adversary proceeding, would have constituted a "non-core" adversary proceeding over which the Bankruptcy Court would not have retained jurisdiction subsequent to dismissal. *See In Re: GWF Inv., Ltd.*, 85 B.R. 771 (Bankruptcy S.D. Ohio, 1988).

CONCLUSION

Thus, and for all the foregoing reasons, as set forth in Jatoi's Petition or Writ of Certiorari, the Court should grant the Writ of Certiorari and set the case down for briefing and argument on the issues herein presented.

Respectfully submitted,

Dooley & Rucker, P.C.
Michael R. Cooper
#04782000

3300 Oak Lawn, Suite 602
Dallas, TX 75219
(214) 443-0309

Attorneys for Jatoi

LAW OFFICE OF WILLIAM C. MEIER
& ASSOCIATES, P.C.

Central Park Tower
2350 Airport Freeway, Suite 660
Bedford, Texas 76022
817/283-9528; metro 540-5295

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	IN PROCEEDINGS
	§	UNDER CHAPTER 11
ALIMADAD JATOI	§	
	§	CASE NO. 487-42139-MT-11
DEBTOR	§	
	§	(Filed Dec. 19, 1989)

MOTION TO WITHDRAW AS COUNSEL OF RECORD AND MOTION TO REQUIRE DEBTOR TO PAY ATTORNEY'S FEES PREVIOUSLY ORDERED BY THIS COURT

TO THE HONORABLE MASSIE TILLMAN, UNITED STATES BANKRUPTCY JUDGE:

COMES NOW WILLIAM C. MEIER, Attorney of Record for ALIMADAD JATOI and Movant herein, and files this his Motion to Withdraw as Counsel of Record and Motion to Require Debtor to Pay Attorney's Fees Previously Ordered by this Court, and in support thereof would respectfully show the Court as follows:

I.

Movant is compelled to withdraw from this case for the reason that a personality conflict exists between Movant and Debtor which makes it impossible for Movant to continue representation of Debtor.

II.

Movant would further show that on February 2, 1989, an Order Awarding Compensation and Expenses was entered, which Order authorized the payment of $6,010.00 in attorney's fees and $44.70 in expenses. Movant would further show that on February 8, 1989, an Order Awarding Compensation and Expenses was entered, which Order authorized the payment of $6,445.00 in attorney's fees and $132.37 in expenses. Movant would further show that on March 13, 1989, an Order Awarding Compensation and Expenses was entered, which Order authorized the payment of $2,232.50 in attorney's fees and $97.50 in expenses. As of the date of this Motion, there remains an unpaid balance totaling $14,962.07 on said Orders. Movant requests that Debtor be ordered to pay all fees remaining unpaid on each of these three (3) Orders dated February 2, 1989, February 8, 1989 and March 13, 1989, as well as any additional fees which have accrued since the entry of the Orders which may be ordered paid by this Court.

III.

Movant would show the Court that Movant has filed a proper claim for attorney's fees accumulated under

written Authority to Represent and Fee Agreements executed by the Debtor, DR. ALIMADAD JATOI, along with is wife, DR. ALCINA F. JATOI, and THE JATOI PARTNERSHIP, having a balance due of $41,261.00. Movant asserts a claim to be inserted in the Plan of Reorganization if the Plan is approved over Movant's objection for this amount. Movant asserts an attorney's lien possessory in nature on all of the files and records in his possession as to these clients. In filing a claim in the bankruptcy matter of Debtor, ALIMADAD JATOI, Movant expressly retains his claim against other clients responsible for these fees.

WHEREFORE, Movant prays that he be allowed to withdraw as Attorney of Record for Debtor, ALIMADAD JATOI, and that Debtor be ordered to pay all attorney's fees and expenses which remain unpaid on the Orders of February 2, 1989, February 8, 1989, and March 13, 1989, and the accumulated fees of $41,261.00 as more fully identified herein and in motions pending before the Court, any additional fees which this Court may award, and that Movant be granted such other and further relief to which he may show himself justly entitled, both at law and in equity.

Respectfully submitted,

LAW OFFICE OF WILLIAM C.
MEIER & ASSOCIATES, P.C.
Central Park Tower
2350 Airport Freeway, Suite 660
Bedford, Texas 76022
817/283-9528; metro 540-5295

By: /s/ William C. Meier
WILLIAM C. MEIER
State Bar No. 13909000

ATTORNEYS FOR DEBTOR

* * *

[p. 25] these Motions in Court that we're hearing today.

Your Honor, I was about to finish by saying that the original Schedules that were filed in this Chapter 11 case included me as a creditor. I was listed as a creditor. I was not listed as a disputed or contingent creditor, and it's my understanding if from what little I know about bankruptcy law that if that's filed in that fashion, I was not required to file a claim, and I was not required to file a Proof of Claim in this Chapter 11 proceeding in order to go forward with this claim at this time for those accumulated fees.

Your Honor, I have brought with me to Court Motion to Withdraw as counsel for Dr. Alimadad Jatoi in light of the fact that we've not been able to resolve this matter, hoping that – I've not filed it previously hoping that it could be resolved right down to the last day of the time of this hearing. Hasn't been, and I brought a Motion with me today to file, if that is the – that looks as though that's going to be the circumstances needed to be accomplished, and after we finish the hearing, I'll take it upstairs and file it and ask the Court to schedule it for a

* * *

[p. 30] John Penn. Mr. Meiers says he did. I'm sure he participated in it, but Mr. St. Clair Newbern participated also and was paid $35,000 to do that.

Dr. Jatoi believes that he – he's been – of all the – all the problems he's had, his attorney's fees are a major one, and the cause of his bankruptcy. That would be the total sum of the testimony that Dr. Jatoi would proffer, and if it

please the Court, I would submit that if he wants to hear it from the witness stand, we can do it, but in the interest of time, I would proffer that as Dr. Jatoi's testimony.

THE COURT: All right. The objections by the Debtor to the claim of Mr. Meier are overruled, and that claim is allowed.

Mr. Meier's objection to the Plan will be sustained.

And the Debtor's Motion for Mr. Meier's fees to be disgorged is overruled.

Mr. Meier, would you prepare three separate orders for me, please, sir, on each of those three matters?

MR. MEIER: Yes, Your Honor.

THE COURT: I want a separate Order on each one.

* * *

United States District Court

Northern District of Texas

July 27, 1993

Nancy Doherty
Clerk of Court

Honorable Joe Kendall
Judge, U.S. District Court
1100 Commerce
Dallas, Texas 75242

Re: BANKRUPTCY NO.
ADVERSARY NO.

Dear Judge Kendall:

Pursuant to Bankruptcy Rule 8007, the U.S. Bankruptcy Clerk's Office has referred the record on appeal in the above styled case to this office. This case was entered on the docket in this office on July 27, 1993. The briefing time for the parties will start to run on July 27, 1993. Attorneys of record are directed to Bankruptcy Rule 8009 for briefing times. Attached is the record on appeal with related case papers. The record on appeal has been assigned Civil Action No. 3:93-CV-1451-X.

Sincerely,
NANCY DOHERTY

/s/ Mary Jane Lord
Deputy Clerk

Enclosures

cc: Honorable Robert McGuire, U.S. Bankruptcy Judge
Honorable Michael Youdin, U.S. Bankruptcy Clerk
Attorneys of Record

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	)	CASE NO. 487-42139-11
ALIMADAD JATOI	)	(Filed Dec. 11, 1989)
DEBTOR	)	

DEBTOR'S MOTION FOR THE FEES OF WILLIAM C. MEIER TO BE DISGORGED

COMES NOW Alimadad Jatoi, debtor, in the above captioned matter and makes this motion for the fees of William C. Meier ("Meier") to be disgorged and in support thereof would show the Court the following:

1. Debtor retained William C. Meier and his lawfirm as counsel for the case *A. M. Jatoi v. Park Center, Inc., d/b/a Doctors Community Hospital, Robert J. Morris, C. J. Godell, Myron L. Glickfeld, J. Gordon Dowling, Robert Starr and Leroy Gillian* in the 348th Judicial District Court of Tarrant County, Texas in July 1987.

2. In December 1987, Meier negotiated a settlement for debtor in the approximate amount of $56,000.00. At this time, debtor had already filed for bankruptcy and was under the jurisdiction of the bankruptcy court.

3. Under the rules of the Bankruptcy Code, any monies received by debtor are to be deposited in a fund and then schedules are to be filed with the bankruptcy court.

4. Meier deposited the settlement in his trust account. Although Meier released approximately $8,000.00 to debtor, approximately $13,000.00 was paid to

St. Clair Newbern in settlement of debtor's account and Meier retained the balance of the settlement. On the information and belief of debtor, the amount that Meier retained in his trust account was $35,000.00.

Further, Meier received a $10,000.00 retainer from debtor.

There is an additional amount of $18,000.00 that Meier received which is accounted for in a letter dated July 22, 1987 from a member of Meier's staff (attached hereto as Exhibit "A").

Debtor believes that these amounts, totaling $63,000.00 have never been accounted for by Meier.

5. Meier's fees have been based on $150.00 per hour and not $125.00 as directed by the Court.

WHEREFORE PREMISES CONSIDERED, debtor Alimadad Jatoi prays that a hearing be set and that upon hearing of this motion, the Court will sustain the same and order William C. Meier & Associates, P.C. to disgorge the sum of $35,000.00 the sum of the settlement which Meier retained, the $10,000.00 retainer and the $18,000.00 payment which Meier has never accounted for and such other and further relief to which debtor may show himself entitled both at law and in equity.

DATED: December 11, 1989.

Respectfully submitted,

LAW OFFICES OF JOE B. ABBEY
1717 Main Street
Suite 2220
Dallas, Texas 75201
(214) 748-0423

BY: /s/ Joe B. Abbey
Joe B. Abbey
Bar No. 00789000

STATE OF TEXAS)
COUNTY OF DALLAS)

VERIFICATION

BEFORE ME, the undersigned Notary Public, on this day personally appeared ALIMADAD JATOI, who being by me duly sworn on his oath deposed and said that he is the DEBTOR in the above-entitled and numbered cause and that every statement contained therein is within his personal knowledge and are true and correct.

/s/ Alimadad Jatoi
ALIMADAD JATOI

SUBSCRIBED AND SWORN TO BEFORE ME, on the 8th day of (SRA) December, 1989, to certify which witness my hand and official seal.

/s/ Sybil R. Allison
Notary Public in and for
Dallas County, Texas

My Commission Expires:
8-3-89

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Motion for the Fees of William C. Meier to be Disgorged was placed in the United States Mail addressed to attorney of record, William C. Meier, 2350 Airport Freeway, Suite 660, Bedford, Texas 76022 on this the ___ day of December, 1989.

/s/ Joe B. Abbey
Joe B. Abbey
Attorney for Dr. Alimadad Jatoi

EXHIBIT "A"

LAW OFFICE OF
WILLIAM C. MEIER
ATTORNEYS AND COUNSELORS AT LAW

CENTRAL PARK TOWER
2360 AIRPORT FREEWAY, SUITE 660
BEDFORD, TEXAS 76022

WILLIAM C. MEIER 817/283-9528
METRO 540-5295

July 22, 1987

MEMORANDUM

TO: Dr. Jatoi
FROM: Ann am

Enclosed are two copies of our statement dated July 21, 1987.

Per instructions from WCM, I have deposited today into the Trust Account of Law Offices of William C. Meier the June and July payments (per court order) from Corporation J Enterprises, Cambridge Management Services, Inc. as Agent, in the amount of $18,000.00.

Also, per instructions from WCM, a payment in the amount of $675.17 was hand delivered today to Ms. Tina Skeen, DSI Capital Markets Group, per her July 13, 1987, letter to you regarding reimbursement of expenses.

/am
Enclosures

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	
ALIMADAD JATOI,	§	CASE NO. 487-42139-11
	§	
DEBTOR.	§	(Filed December 16, 1989)

RESPONSE TO DEBTOR'S MOTION
FOR THE FEES OF WILLIAM C. MEIER
TO BE DISGORGED

COMES NOW WILLIAM C. MEIER, Claimant in the above-captioned cause, and files this Response to the Motion for Disgorgement of Fees and for such pleading would show the Court the following:

1. Debtor requested WILLIAM C. MEIER to take over a long-pending law suit styled *A.M. JATOI v. Park Center, et al,* and Claimant agreed to represent JATOI's interest in attempting to resolve by settlement that litigation.

2. A settlement was negotiated with Park Center, Inc., through its attorney, James A. Williams, of the law firm of Bailey & Williams, with the settlement amount being $55,726.27. That settlement proposal was approved upon Application for Approval of Settlement Agreement and Deposit of Settlement Fund, filed on February 4, 1988, with an Order Approving Settlement Agreement and Deposit of Settlement Funds dated February 24, 1988, signed by this Honorable Court.

3. Pursuant to the Order of the Court, the funds were deposited into the trust account of WILLIAM C.

MEIER, attorney for Debtor, and paid according to previously-approved Court orders and upon the specific written approval of Debtor-in-Possession, DR. ALIMADAD JATOI.

4. All funds were distributed according to a disbursement instruction of DR. ALIMADAD JATOI dated March 1, 1988, a copy of which is attached hereto as Exhibit "A". As a further allegation in Paragraph 4, Debtor claims WILLIAM C. MEIER received a $10,000.00 retainer. In fact, the Court approved a post-petition retainer in the amount of $25,000.00; however, that retainer was not paid as funds were not available to the Debtor. No other retainer was ever paid by Debtor to the Law Office of William C. Meier or any firm representing Dr. Alimadad Jatoi. An initial deposit of $10,000.00 was paid against legal fees upon the written Authority to Represent and Fee Agreement dated December 4, 1986, which deposit was credit against legal services rendered prior to the filing of the bankruptcy.

5. Prior to the filing of the bankruptcy, payments were ordered of $9,000.00 per month for June and July of 1987. By checks dated July 20, 1987, Corporation J Enterprises, Cambridge Management Services, Inc., as Agent, issued two (2) checks payable to WILLIAM C. MEIER, Trustee. Those checks were deposited in the Law Office of William C. Meier Trust Account, and subsequently, checks were written on July 23, 1987, to ALIMADAD JATOI in the amount of $4,324.83, which check was endorsed "For Deposit Only" and deposited in First Texas Savings Account by DR. ALIMADAD JATOI; a check for $9,000.00 was made payable to DR. ALIMADAD JATOI dated July 28, 1987, and was endorsed to

WILLIAM C. MEIER to be applied on account; likewise, a check in the amount of $4,675.17, dated July 28, 1987, was made payable to DR. ALIMADAD JATOI and endorsed to the Law Office of William C. Meier in payment on account. Those latter two (2) payments were in relation to a statement dated July 21, 1987, delivered to DR. ALIMADAD JATOI prior to the time of the endorsement of the checks, covering attorney's fees due for that statement of $10,000.00, with the balance of $3,675.17 paid on expenses due.

6. Each and every payment received by the Law Office of William C. Meier regarding activities as attorney for DR. ALIMADAD JATOI were deposited in trust accounts and paid out only upon express approval and instruction of DR. ALIMADAD JATOI, in his individual capacity before the filing of the bankruptcy, and as Debtor-in-Possession and in accordance with Court Orders after the filing of the bankruptcy.

7. In Paragraph 5, Debtor inaccurately reflects the approved Application to Employ Attorney, a copy of which is attached hereto as Exhibit "B". The Order Authorizing Employment of Attorney dated August 28, 1987, is attached as Exhibit "C". Upon the filing of the first Application for Allowance of Attorney's Fees filed November 19, 1987, Claimant sought approval of fees in the amount of $14,132.50. A copy of that application is attached hereto as Exhibit "D". The application provided for an additional amount of $50.00 per hour to be added to the regular hourly charges for Court appearances. Upon approving the Order Awarding Compensation and Expenses, the Court reduced that $50.00 additional charge to a $25.00 additional charge, and then approved

the fee application in the amount of $14,107.50. There was only one (1) hour court appearance on Page 2 of the detailed statement for Professional Services Rendered from August 4, 1987, through October 31, 1987, which was the subject of the $25.00 reduction. Since that time, hourly charges for out-of-court activities on the part of WILLIAM C. MEIER have been $150.00 per hour and $125.00 per hour for Robert T. Miller, Jr., with in-court claims totalling $25.00 additional.

WHEREFORE, PREMISES CONSIDERED, Claimant WILLIAM C. MEIER prays that a hearing be set, and upon of the Motion it be in all things denied, and that this Claimant be afforded such other and further relief to which he may show himself justly entitled, both at law and in equity.

DATED: December 18, 1989.

Respectfully submitted,

LAW OFFICE OF WILLIAM C.
MEIER & ASSOCIATES, P.C.
Central Park Tower
2350 Airport Freeway, Suite 660
Bedford, Texas 76022
817/283-9528; metro 540-5295

By: /s/ William C. Meier
WILLIAM C. MEIER

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	)	
ALIMADAD JATOI	)	CASE NO. 487-42139-11
DEBTOR	)	(December 11, 1989)

OBJECTION TO CLAIM OF WILLIAM C. MEIER

COMES NOW Alimadad Jatoi ("Jatoi"), debtor in the above captioned case and objects to the claim of William C. Meier ("Meier") and in support thereof would show:

1. Claimant Meier and his law firm have represented the debtor since 1986 in several causes of action to wit:

Amega Construction, Inc. vs. Dr. Alimadad Jatoi et al; formerly Cause No. 236-91117-85, formerly pending in the 236th Judicial District Court of Tarrant County, Texas, and currently pending in the Bankruptcy Court, Fort Worth Division.

Guaranty Federal Savings & Loan Association vs. Alimadad Jatoi, M.D.; formerly Cause No. 141-105085-87, and currently pending in the 141st Judicial District Court of Tarrant County, Texas, prior to being removed to the Bankruptcy Court or the United States District Court.

Coldwell Banker Commercial Group, Inc. d/b/a Coldwell Banker Commercial Real Estate Services vs. Alimadad Jatoi d/b/a J Enterprises; formerly Cause No. 87-20711-1, in the Tarrant County Court At Law No. One, Tarrant County, Texas, prior to being removed to the Bankruptcy Court. (Now Dismissed)

2. Neither case is close to settling and both are set for trial in the summer of 1990. Extensive discovery has been completed.

3. To date, debtor has payed claimant $288,394.10 in attorney's fees of which $136,608.60 was payed after debtor filed for bankruptcy on August 4, 1987. While the fees were approved by the Court, the debtor is not aware of a motion filed in advance which would allow objections.

4. Debtor believes that nothing of significance has been accomplished by Meier to warrant $288,394.10 in attorney's fees before either case has been tried. The fees have been excessive in light of the work done. No results have been accomplished.

5. Meier is claiming $14,962.07 in administrative fees. Debtor objects to the $14,962.07 claim in that in a letter dated January 19, 1989 (attached hereto as Exhibit "A") Meier submitted a bill for $12,632.07 and advised debtor that no further work would be done until the bill was payed. Additionally Meier stated verbally that he resigned and would do no more work. No further work has been done by Meier with the exception of a letter written to Judge Porter in Amega Construction, Inc. v. Dr. Alimadad Jatoi, et al, Cause No. 48841-E requesting a transfer of the case. The extra $2,330.00 Meiers claims is due him is not accounted for.

6. Meier is also claiming $41,261.00 as a secured claim as well as the $14,962.07 in administrative fees for a total of $56,223.07. Debtor objects to the excessive amount of this claim in light of the fees already paid out to Meier and his firm. These claims in no way represent reasonable

fees for services rendered and do not represent fair value upon quantum meruit for services rendered.

7. In addition, in his proof of claim, Meiers only asserts that $14,962.07 is owed him. Under the bankruptcy code all creditors claims must be filed by the filing deadline in order to be considered for payment by the bankruptcy court. Since Meier only listed $14,962.07 by the filing deadline, this is the only amount that should even be considered as Meier's claim.

8. In support of his assertion that Meier's claims do not represent reasonable fees for servies [sic] rendered, debtor would show that in an order (attached hereto as Exhibit "B") in the Amega case, Judge Mahon was provoked to deliver the following footnote:

> "Based upon the limited record before the Court, it seems that Guaranty Federal Savings' lien is prior to Amega's lien. If this is true, the Court expects the parties to resolve this issue *without further expense to the clients* and without further use of judicial resources. (Emphasis supplied)
>
> The Court need not remind the competent and learned counsel in this case of the salutary effect of Rule 11 of the Federal Rules of Civil Procedure which requires counsel to have a good faith belief in their assertions prior to presenting such to the Court. Extensive discovery has taken place in these proceedings and the Court expects that all assertions are based upon sound factual support."

Throughout the time in question Meier charged $150.00 per hour for his fees. In open court the Honorable

Judge Massie Tillman requested Meier to reduce his application for fees to $125 per hour. To the knowledge of the debtor all of Meier's fees are based on $150.00 per hour.

9. Further, on the information and belief of debtor, Meier has received several sums of money which were never accounted for by Meier. First, Meier retained approximately $35,000.00 in his trust acount [sic] which was received in settlement of A. M. Jatoi v. Park Center Inc., et al in the 348th Judicial District Court of Tarrant County, Texas. Second, Meier received a $10,000.00 retainer from debtor. Third, Meier received $18,000.00 as shown in a July 22, 1987 letter from a member of Meier's staff (attached hereto as Exhibit "C").

WHEREFORE PREMISES CONSIDERED, Debtor Alimadad Jatoi prays that upon hearing of this Objection, the Court will sustain the same, deny approval of the claim of William C. Meier for $14,962.07 in administrative fees and $41,261.00 as a secured claim, and approve such other and further relief to which debtor may show itself justly entitled, both at law and in equity.

Dated December 11, 1989.

Respectfuly [sic] submitted,

LAW OFFICES OF JOE B. ABBEY
1717 Main Street
Suite 2220
Dallas, Texas 75201
(214) 748-0423

BY: /s/ Joe B. Abbey
Joe B. Abbey
Bar No. 00789000

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
ALIMADAD JATOI,	§	CASE NO. 487-42139-11
DEBTOR.	§	(December 11, 1989)
	§	

RESPONSE TO OBJECTION TO CLAIM
OF WILLIAM C. MEIER

COMES NOW WILLIAM C. MEIER, Claimant in the above case, and files this Response to the Objection to Claim of William C. Meier filed by Debtor on December 11, 1989, and in support of such pleading would show the Court the following:

1. Claimant would show that the many matters upon which he has represented the Debtor greatly exceed those listed in Paragraph 1 of Debtor's Objection. Debtor correctly states that the case of *Amega Construction, Inc. v. Dr. Alimadad Jatoi, et al,* now consolidated with the case of *Alimadad Jatoi v. U.S. Life Title,* is currently pending in the United States District Court for the Northern District of Texas, Adversary Proceeding No. 487-4266. The case of *Guaranty Federal Savings & Loan Association v. Alimadad Jatoi* has been fully settled upon terms and conditions as approved by the Bankruptcy Court in its Order Approving Settlement dated May 17, 1989. The case styled *Coldwell Banker Commercial Group, Inc. d/b/a Coldwell Bank Commercial Real Estate Services v. Alimadad Jatoi d/b/a J Enterprises* has likewise been settled, and is no longer pending.

2. Claimant would show that he has represented Dr. Jatoi in pending litigation based upon written contracts for employment dated December 4, 1986, between DR. ALIMADAD JATOI, DR. ALCINA JATOI and THE JATOI PARTNERSHIP, as Clients, and the law firm of Adams, Meier, Addison & Associates, P.C.; upon written Authority to Represent between the same parties and WILLIAM C. MEIER, individually, by agreement dated March 5, 1987; which was then supplanted by a written Authority to Represent and Fee Agreement effective August 4, 1987, and dated October 26, 1987, between THE JATOI PARTNERSHIP (the partners being DR. ALIMADAD JATOI and DR. ALCINA F. JATOI), DR. ALIMADAD JATOI, individually, and DR. ALCINA F. JATOI, individually, and WILLIAM C. MEIER, individually.

3. Debtor correctly asserts that the pending case of *Amega Construction, Inc. v. Dr. Alimadad Jatoi and U.S. Life Title* is not close to settling and is set for trial in the United States District Court for the Northern District of Texas in the Summer of 1990. Debtor is likewise correct that extensive discovery has been completed. Eighteen (18) depositions were completed in the month of June 1987 alone in preparation for a trial setting in the 236th Judicial District Court of Tarrant County, Texas, where the case was pending prior to the bankruptcy.

4. Debtor inaccurately asserts payment of $288,394.10. The correct total payments of attorney's fees is $187,010.00. Of that total amount, $90,707.50 was paid prior to bankruptcy, and $96,302.50 was paid post-bankruptcy after August 4, 1987. In every instance of payment since the date of the filing of the bankruptcy, a Motion was filed and a copy forwarded to ALIMADAD JATOI

prior to an Order being entered by the Bankruptcy Court regarding approval of the fee application. Debtor ALI-MADAD JATOI was given full explanation of every statement, and full opportunity to make any objection he chose at the time.

5. Claimant disputes the validity of the preposterous position stated by Debtor in Paragraph 4 of the Objection that nothing was accomplished in WILLIAM C. MEIER's representation, and attributes the statement to Debtor's suffering from acute selective, negative monetary amnesia. Claimant asserts Debtor benefited from resolution of many of the legal matters pending at the time of his initial representation, including a reduction in debt claimed against the Debtor's principal asset, an office building on Brown Trail in the City of Bedford, Texas, whereby the first lien debt on that property was reduced from a claimed approximate $11,000,000.00 to a documented $5,700,000.00 upon settlement of an adversary proceeding that began as a state court action styled *Guaranty Federal Savings & Loan Association v. Alimadad Jatoi.* The fees are reasonable and necessary to accomplish the goals and objectives of the client in a professional manner.

6. Debtor misreads the letter of January 19, 1989, attached as an Exhibit "A" to Debtor's Objection to Claim of William C. Meier pertaining to Paragraph 5. The letter of January 19, 1989, reflected previously-filed Applications for Allowance of Attorney's Fees to Attorney for Debtor, one filed December 2, 1988, and one filed January 9, 1988, which totaled the amount stated in the letter of $12,632.07 for attorney's fees and expenses. Subsequently, the last Application for Allowance of Attorney's Fees was

filed February 11, 1989, which requested fees of $2,232.50 for legal services rendered in the month of January, 1989. Two (2) items of one-tenth (.1) hour each were charged after January 19, 1989, regarding receipt of letters that were forwarded to Dr. Jatoi. The balance of all other work was completed prior to the January 19, 1989, letter as reflected in the statement attached to the Application for Allowance of Attorney's Fees. After the January time frame, correspondence received at the office was forwarded regularly upon receipt to the Debtor without further charge or request for attorney's fees or expenses. The amount of the administrative claim of $14,962.07 results from the total of all of the outstanding, approved attorney's fees and expense orders through the time frame of January 31, 1989. Claimant has, upon the request of Debtor, held matters in abeyance pending Debtor's attempted resolutions of his bankruptcy matter. Claimant took action at Debtor's request in contacting Debtor's former bankruptcy attorney and meeting with other attorneys representing Debtor from time to time without further claim for attorney's fees or expenses.

7. Debtor again suffers from acute selective, negative monetary amnesia in the assertions made in Paragraph 6 of the Objection. The total claim of $41,261.00 merely represented the accumulated portion of fees that would have been charged on the written contracts but for the contingency aspect of the contracts as drafted, and were principally accumulated in the latter portion of the months when tremendous amounts of hours were dedicated by Claimant and his firm to the work of the pending litigation. In the month of June 1987 alone a total of 335.65 hours was expended by four (4) attorneys and one

(1) paralegal in an effort to prepare for the trial setting then scheduled for trial on the merits of the *Amega* lawsuit in the 236th Judicial District Court. In order to accomplish the settlement with Guaranty Federal and achieve a savings of several million dollars in first lien debt upon Debtor's principal asset, a multi-story office building on Brown Trail in Bedford, Texas, Claimant agreed with Dr. Jatoi to forego any contingency claim in exchange for reimbursement of the accumulated fees in the future. The accumulated fees represent reasonable charges in lieu of a contingent fee interest in the pending litigation in light of the benefits of the settlement reached with Guaranty Federal.

8. Debtor inaccurately asserts the requirement for Claimant to file a claim in a Chapter 11 proceeding where the Debtor in Possession lists the claim in his schedules filed with the Court. Debtor listed a claim for attorney WILLIAM C. MEIER in his schedules without asserting that such claim was disputed, contingent or unliquidated, and accordingly, there was no need for Claimant to file a claim pursuant to 11 U.S.C. §521(a) and 11.06a2.

9. Debtor correctly quotes form the footnote of Honorable Judge Eldon Mahon. This comment was given at a hearing prior to the full resolution of the Guaranty Federal Savings & Loan Association lien question with Amega Construction, and successfully resolved by negotiation between counsel, including the counsel for U.S. Life Title. That is an example of competent counsel resolving a legal issue in their clients' best interests.

10. As a portion of Paragraph 8 of the Objection, Debtor inaccurately recalls activities in Open Court. This

Honorable Court approved an hourly fee of $150.00 per hour for attorney WILLIAM C. MEIER, an attorney of more than twenty (20) years experience in litigation of cases. The Court did reduce the $50.00 additional charge for in-court time to $25.00 additional charge for in-court time in Open Court at the time of the hearing on the first Application for Allowance of Attorney's Fees. After that portion was corrected, the Court thereafter approved every application upon the fee schedule approved by the Court. Again, Debtor simply is inaccurate in his recollection of the events occurring in Court.

11. All sums received by WILLIAM C. MEIER, as attorney for ALIMADAD JATOI, or in any way associated with his representation of DR. JATOI were totally accounted to DR. ALIMADAD JATOI, and handled in accordance with Court orders after the filing of the bankruptcy on August 4, 1987. The matters mentioned in Paragraph 9 of the Objection are the subject of a motion for fees to be disgorged, and are dealt with more fully in the response to that motion.

WHEREFORE, PREMISES CONSIDERED, Claimant WILLIAM C. MEIER prays that upon hearing of this matter, the Court sustain his position and enter its order directing that $14,962.07 be paid as administrative fees according to the Plan of Reorganization of DR. ALIMADAD JATOI, and that $41,261.00 be allowed as a secured claim, secured by WILLIAM C. MEIER's lien on the legal documents and papers of the litigation of DR. ALIMADAD JATOI, and Claimant moves that the Court approve such other and further relief to which he may show himself justly entitled, both at law and in equity.

DATED: December 18, 1989.

Respectfully submitted,

LAW OFFICE OF WILLIAM C.
MEIER & ASSOCIATES, P.C.
Central Park Tower
2350 Airport Freeway, Suite 660
Bedford, Texas 76022
817/283-9528; metro 540-5295

By: /s/ William C. Meier
WILLIAM C. MEIER

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
ALIMADAD JATOI,	§	CASE NO.
	§	487-42139-11
DEBTOR.	§	

OBJECTION TO DEBTOR'S PLAN OF REORGANIZATION

(Filed Nov. 30, 1989)

NOW COMES WILLIAM C. MEIER of the LAW OFFICE OF WILLIAM C. MEIER & ASSOCIATES, P.C., one of the creditors listed in Debtor's Disclosure Statement and Plan of Reorganization, and in support of his Objection to the Debtor's Plan of Reorganization submitted by Debtor represents as follows:

1. The Movant and his law firm represent Debtor as attorney of record in two causes of action presently pending in the United States District Court, Northern District of Texas, Fort Worth Division. Movant was approved as special litigation counsel to represent the Dr. Alimadad Jatoi, Debtor, by Order of the Bankruptcy Court entered on August 31, 1987. (A copy of said Order is attached hereto as Exhibit "A".)

2. Thereafter, Movant filed several Applications for Allowance of Attorney's Fees for fees and expenses incurred after the filing of the Chapter 11 Bankruptcy, which were all approved by the Bankruptcy Court. However, three (3) of the Applications remain unpaid at this time: (1) Order Awarding Compensation and Expenses

entered on February 2, 1989, approving fees in the amount of $6,010.00 and expenses in the amount of $44.70 (attached hereto as Exhibit "B"); (2) Order Awarding Compensation and Expenses entered on February 8, 1989, approving fees in the amount of $6,445.00 and expenses in the amount of $132.37 (attached hereto as Exhibit "C"); Order Awarding Compensation and Expenses entered on march 13, 1989, approving fees in the amount of $2,232.50 and expenses in the amount of $97.50 (attached hereto as Exhibit "D").

3. The Debtor has listed the amount of $14,000.00 as an unsecured claim under Section 3.21 of the Debtor's plan of Reorganization, listing as Class 20 an amount of $14,000.00 as an unsecured claim, and stating that the Class 20 claim is impaired. Debtor's reference to $14,000.00 may be an apparent inaccurate reflection of a total of $14,962.07 previously approved by the Court as set out more fully herein (see Exhibits "B", "C" and "D"). However, the correct amount which has been approved by the Bankruptcy Court is $14,687.50 in fees, and $274.57 in expenses, for a total amount approved of $14,962.07 (see Exhibits "B", "C" and "D"). That amount of money is not an unsecured claim, but rather is properly classified as an administrative claim in accordance with the provisions of Sections 503(b) or 507(a)(1), (3), (4) or (6) of the Bankruptcy Code, and should properly be listed as a Class 1 claim. The Bankruptcy Court has previously approved these claims and they are not impaired as an administrative claim.

4. An additional claim exists which should properly be listed as a Class 20 claim. This claim consists of attorney's fees in the amount of $41,261.00 actually incurred

on behalf of Dr. Alimadad Jatoi at the time of the filing of his Chapter 11 bankruptcy, but accumulated upon written agreement between the parties in exchange for an assigned chose in action interest in the pending lawsuit styled *Amega Construction Company, Inc. v. Dr. Alimadad Jatoi, et al.* That contingent fee assigned interest was subsequently waived upon express agreement with Alimadad Jatoi that the work represented by those hourly fee charges would be compensated in the future. There remains due and owing the accumulated sum of $41,261.00 in hourly fee charges at reasonable rates, which should properly be listed as a Class 20 claim. This claim should be a secured claim because notice has been given to Alimadad Jatoi by William C. Meier that he asserts an attorney's lien against the books, records and papers in his possession, securing payment of claims for attorney's fees. The $41,261.00 amount represents reasonable fees for services rendered, and likewise, in the alternative, represents fair value upon quantum meruit for services rendered.

5. William C. Meier has been advised as of this date by attorney Joe Abbey, representing Alimadad Jatoi, that further pleadings will be filed concerning this claim for attorney's fees. Movant William C. Meier specifically reserves the right to respond, amend or supplement this Objection at any time under applicable Court rules after the filing of a pleading by attorney Joe Abbey on behalf of Alimadad Jatoi.

WHEREFORE, PREMISES CONSIDERED, Movant WILLIAM C. MEIER prays that upon hearing of this Objection, the Court will sustain the same, deny approval of the Debtor's Plan of Reorganization, will revise the

claim for attorney's fees and expenses in the amount of $14,962.07 to a Class 1 administrative claim, will include the amount of $41,261.00 as a secured claim at Class 20, and will grant to the Law Office of William C. Meier & Associates, P.C. such other and further relief to which it may show itself justly entitled, both at law and in equity.

DATED: November 29, 1989.

Respectfully submitted,

LAW OFFICE OF
WILLIAM C. MEIER &
ASSOCIATES, P.C.
Central Park Tower
2350 Airport Freeway,
Suite 660
Bedford, Texas 76022
817/283-9528;
metro 540-5295

By: /s/ William C. Meier
WILLIAM C. MEIER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was served upon Joe B. Abbey, 1717 Main Street, Suite 2220, Dallas, Texas 75201, Attorney for Debtor, via express mail, return receipt requested on this 29 day of November, 1989; and was served on the attached list of attorneys of record/parties in interest by placing same in the United States Mail, postage prepaid, on this 29 day of November, 1989.

/s/ William C. Meier